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Current Topics.

The Office of Master.

By the retirement of Sir GEORGE BONNER, the promotion of Mr. JELF to the senior post, and the appointment, on the nomination of the Master of the Rolls, of Mr. JOHN HORRIDGE to fill the vacancy, attention is again drawn to the office of Master. Like that of so many functionaries attached to the court, the title of Master cannot be said to be self-explanatory, yet so accustomed are we to it that we rarely give a thought to its meaning or its history. As we were reminded by Mr. JOHN RITCHIE in the preface to his "Cases decided by Lord Bacon," there were in that Chancellor's time twelve Masters attached to the Court of Chancery, of these the most important being the Master of the Rolls, who, besides possessing the ordinary powers of a Master, was entrusted with the custody of the rolls or records—hence his official designation. To the other eleven Masters were referred questions of fact and other matters upon which they eventually reported to the court. Masters in Chancery were abolished in 1852, the work theretofore done by them being devolved in great part on the Chief Clerks who, however, in the fullness of time, not so many years ago, regained the more dignified title of Masters. Among the old Masters in Chancery were several who rose to the Bench, among the latest of those so favoured being RICHARD TORIN KINDERSLEY, who graduated thence to the more dignified post of Vice-Chancellor. There were others who, after expecting greater professional advancement, were content to subside into a Mastership in Chancery, for example, Sir WILLIAM HORNE, who had filled the office of Attorney-General and might reasonably have hoped for better things; but the race is not always to the swift or the battle to the strong. The Masters on the common law side are of a much later creation, and are appointed in rotation by the Lord Chancellor, the Lord Chief Justice, and the Master of the Rolls. In one of the numerous inquiries that have been held as to the work of the courts, Lord Chief Justice COLERIDGE asked whether the time of the Masters was always fully occupied. To this he received the somewhat amusing answer that those Masters who were complaisant and not over-exacting had as a rule a burdensome amount of work to cope with, whereas those who on the contrary were strict and little disposed to consult the convenience of the parties had comparatively little to do. Not all who have filled the post of Master have relished the duties. Rather more than a generation ago a very learned reporter was appointed a Master, but threw it up after three days, his explanation of his unusual conduct being that he "could not stand those d——d solicitors' clerks" worrying him with irritating points of practice.

The Selden Society.

LORD WRIGHT made reference in the course of his presidential address, at the recent annual meeting of the Selden Society, to the losses sustained by the deaths of LORD HANWORTH and Sir FREDERICK POLLOCK. To the former, it was said, all the members desired to pay a sincere tribute for the support which he had always extended to the Society both as president and as a member of the council. The latter was one of the original members, had served on the council since 1908, became its president later, and had been one of its literary directors until his death. The Master of the Rolls said that it would be a work of supererogation to dwell on the supreme pre-eminence of Sir FREDERICK POLLOCK as a lawyer, or to seek to describe the great services which he had rendered to the cause of legal studies in this country and to the advancement of law generally, both in its historical and its objective aspects. He would, it was thought, be recognised in future generations as one of the classical exponents of English law. Members were reminded that the present was the fiftieth year since the foundation of the Society and that during the period of its existence they had received fifty-five volumes of the Society's publications and three additional volumes. Regret was expressed that the membership of the Society was still small, comprising as it did about 150 American members, and, in this country, about 300, including 150 institutional members. A report of the proceedings appears on p. 212 of the present issue.

Borstal Detention.

The Times of 16th March reports a statement made by DU PARCQ, J., in the course of a judgment delivered in the Court of Criminal Appeal, when an application for leave to appeal against a sentence of three years' detention in a Borstal Institution passed by HUMPHREYS, J., at Lincoln Assizes, was refused. DU PARCQ, J., made reference to the

fact that there had been a report before the trial judge from the prison governor that the applicant was not fit for Borstal detention but that no reason had been assigned for that statement. The learned judge endorsed the view of HUMPHREYS, J., that the reason for the statement ought to have been given and alluded to the statutory provision that a judge in deciding whether a case was one suitable for Borstal detention was to be guided by any report made by or on behalf of the Prison Commissioners. "Where the report states," the learned judge continued, "that, in the opinion of the person making it, the case is not suitable for Borstal detention, the reasons for that recommendation should be added, so that the court may be able to decide whether the reasons are good or bad, and, if necessary, make further investigation."

The Gaming Laws.

THE attention of readers may be drawn to the report, on p. 242 of the present issue, of a lecture recently given by Mr. GILBERT BEYFUS, K.C., in the Inner Temple Hall to members of the Solicitors' Managing Clerks' Association, on "Some Aspects of the Law as to Gaming." The lecturer alluded to the slender connection between his subject and the common law and to the fact that the law of gaming as it exists at the present time is almost entirely the product of statutes and decisions of the court. In view of the report to which reference has been made it would be out of place to treat the matter at any length here, but it is thought that attention may be drawn to certain of the lecturer's statements which appear to be of particular interest. Thus, he questioned the accuracy of the decision in *Carlton Hall Club* v. *Lawrence* [1912] 2 K.B. 153, and noted that LORD ROCHE, as ROCHE, J., delivered a dissenting judgment. Again, he mentioned the very interesting fact that it is the invariable habit of French counsel acting on behalf of casinos to quote *Société Anonymé des Grandes Establissements du Touquet Paris-Plage* v. *Baumgart* (1927), 43 T.L.R. 278, to show that money lent for the purposes of gaming which is irrecoverable by French law is recoverable against an Englishman. In every case, the lecturer stated, in which he had acted against a French casino suing an Englishman for a debt, he had been able to show that such loans were not recoverable in France and the French counsel had dropped the case to prevent any decision against *Baumgart's Case* being reported. The speaker further pointed out that the existence of betting offices throughout the country was not due to some subtle evasion of the law but to the development of the telephone and telegraph since the passing of the Betting Act, 1853, for it had been decided that bets made by these means, or even by post, did not constitute resorting to a betting office. Examples were given of how the necessary degree of skill was introduced into newspaper competitions and means were suggested of getting up test cases on the law of gaming. LORD WRIGHT, M.R., who presided, alluded to the difficulty of the law on the subject and explained how it arose. There was, the learned Master of the Rolls said, a good deal of money in it, and, where there was money, people of ingenuity would exercise their powers in devising means of evading such laws as there were, which led to further distinctions and legislation *ad infinitum*.

The Road Traffic Bill in Committee.

THE committee stage of the Road Traffic Bill, which seeks to amend the Road Traffic Act, 1930, and the Road and Rail Traffic Act, 1933, in the manner already indicated in these pages (see 81 SOL. J. 85), was completed on Tuesday, when a number of amendments were rejected or withdrawn. On cl. 1, which is intended to legalise with some reservations the practice of sharing the costs of a journey by taxicab, an amendment was proposed to exempt from holding a road traffic licence vehicles provided by the proprietors of private schools or contractors for conveying children of not more than fifteen years of age to and from school. This, it was urged, was desirable in the interests of safety and to prevent overcrowding on the roads through parents providing cars for the purpose. An amendment in similar terms had reference to vehicles provided for children attending elementary and secondary schools. Both were rejected. On cl. 2, which is concerned with the extension of the currency of carriers' licences, an amendment was moved that the period should be five years, it being urged that, after such a period, owners of lorries wrote down the value of the vehicles as nil. Captain HUDSON, Parliamentary Secretary, Ministry of Transport, opposed the amendment, though he expressed sympathy with its object. At present the periods for A, B and C licences were two, one and three years respectively. It would be unwise to tie down the Minister of Transport by this inelastic proposal. The Minister, he said, wished to consult the industry before fixing new periods. There was a danger, otherwise, of getting back to the old chaotic conditions before 1933. The amendment was withdrawn and cl. 2 was added to the Bill.

Car Parking.

AN interesting suggestion was made by Lieutenant-Colonel JOHN SANDEMAN-ALLEN, M.P., at a livery dinner held at Grocers' Hall, on Monday, when the Lord Mayor and the Sheriffs were the guests of the Carmen's Company. The suggestion was to the effect that the de-rating provisions of the Rating and Valuation (Apportionment) Act, 1928, and the Local Government Act, 1929, might be applied to garage spaces as an aid to the solution of the parking problem. The Lord Mayor said that the question of motor transport and its inevitable problems must be one in which the company was interested. He was concerned with the problem in the City. Every day at the Mansion House Justice Room fully 90 per cent., and sometimes all the cases, were motoring offences, of which the chief were obstruction and speeding. There was, he urged, no reason why motor users should block the traffic in an already congested area such as the City. Nor was it any answer that garage facilities were inadequate. The real cause of parking trouble in London was laziness. It was too much trouble for people to go to the local station and take a train to town. They must jump into their cars at their houses and be carried straight to the doors of their offices. That, he said, should not be done at the inconvenience of other people. A warning note was necessary. We confess to a preference for a solution of the parking problem by the provision of adequate garage accommodation as compared with the imposition of restrictive measures. Nor do we think that a charge of laziness is one which can well be brought against those using their cars in the manner in question, for where the alternative of journey by train is readily available there can be little doubt of the relative ease of the two methods of transport.

Road Safety: The Crossing Pedestrian.

SEVERAL suggestions worthy of careful consideration are made in a memorandum recently sent by the Pedestrians' Association to the Minister of Transport with a view to obviating difficulties experienced by pedestrians crossing the roadway at light-controlled junctions. One of the difficulties alluded to is the discomfort and anxiety experienced by pedestrians crossing "on the green" from turning traffic, and it is suggested that a period might well be introduced in the light cycle to eliminate this danger. It is also suggested that the indication of the safe pedestrian period should be given by a "cross now" signal where a complicated junction lay-out renders it necessary. A longer amber period is advocated to enable a pedestrian who crosses immediately before the green light changes to enable him to get to the other side of the road, or, where such would cause undue delay to

traffic, it is suggested a warning might be given to the pedestrian of an impending change earlier than that given to the motorist to be ready to start. The practice of placing beacons and studs where there are traffic lights is deprecated as calculated to give the pedestrian a false sense of security. This appears to be a good point. Beacons and studs, it is urged, should mean one thing, and one thing only, namely, that when once the pedestrian steps on the roadway traffic must give way to him. It is suggested that the difficulty occasioned at certain junctions by turning off the lights during the night, and thus converting controlled into uncontrolled crossings, should be met either by keeping the lights working for the twenty-four hours, or by scrapping the beacons at such localities altogether. It is better, the memorandum states, to require a few pedestrians who cross at night to use extra care than to mislead the many pedestrians who have to cross during the day. With regard to the suggestion that pedestrians should be compelled to obey traffic lights, the Association thinks it is impossible to lay down any hard and fast rule owing to the complex way in which lights are operated to facilitate the flow of traffic, but it recognises that motorists have a strong and reasonable grievance against a pedestrian who dashes across the road in front of moving vehicles to which a signal is showing green, and welcomes propaganda impressing on the pedestrian the danger of this practice to themselves and others. The Association advocates an extension of the use of pedestrian operated signals, and suggests that these should respond more rapidly than at present. There appears to be much to be said for many of the suggestions contained in the memorandum, which loses nothing by the studied moderation of the terms in which it is couched and by the careful recognition of the needs of other road users than those with which it is immediately concerned.

Rules and Orders : Tithe : Procedure for Recovery.

THE attention of readers is drawn to the Provisional Tithe Rules, 1937, dated 10th March, which came into immediate operation as provisional rules. Part I is concerned with procedure relating to applications to the court by the Commission for sums alleged due as (*a*) an instalment of an annuity, or (*b*) arrears for which proceedings have not been commenced before 1st April, 1937. A number of forms set out in the Appendix to the Rules are prescribed, and it is provided that the Tithe Rentcharge Recovery Rules, 1891, as amended by the Tithe Rentcharge Recovery Rules of 1926, 1927, 1929 and 1933, and by Pt. III of the Rules now in consideration, shall, so far as they do not conflict with the new Rules, and save as expressly provided, apply to proceedings under Pt. I. Provision is made in the same Part in regard to proceedings to recover tithe rentcharge commenced before 1st April where no order has been made before that day, to cases where an order has been made but not satisfied or executed before 1st April, and also to cases where an order has been made for recovery of arrears before 1st April by the appointment of a receiver. Part II, which deals with extraordinary tithe rentcharge, provides for severance of proceedings, on the *ex parte* application of the Commission or person entitled to recover such, where extraordinary tithe rentcharge is included with tithe rentcharge in the same notice of application or order for recovery. Part III contains a number of detailed amendments of the Rules of 1891 which cannot be indicated here. The new Rules are published by H.M. Stationery Office, price 6d. An article on the subject will shortly appear in this Journal.

Recent Decisions.

IN *Re Brice's Estate : Brice* v. *Frere* (p. 238 of this issue), SIMONDS, J., held that the secretary and proprietress of a Bridge club was precluded by the Gaming Acts, 1845 and 1892, from recovering a sum claimed to have been advanced to or on behalf of a testatrix to enable the latter to discharge gaming debts incurred at the club. The terms on which the deceased and her fellow members played were that she and the others agreed that they would pay their losses to the winners, while the club, acting as a clearing house, paid the winners and recovered the losses from the losers. For reasons of friendship the deceased was allowed by the proprietress to defer payment to the club of the sums she had lost (see *Tatam* v. *Reeve* [1893] 1 Q.B. 44, and on the argument that being allowed to continue to play constituted good consideration for the deceased's promises to pay the sums due, *Hyams* v. *Stuart King* [1908] 2 K.B. 696, 725).

In *The Aizkarai Mendi* (*The Times*, 12th March), where the owners of the "Boree" and her freight, the owners of the cargo, the master and crew, and representatives of members of the crew drowned claimed damages against the owners of the "Aizkarai Mendi" in respect of a collision which took place in a thick fog, the President of the Probate, Divorce and Admiralty Division sitting with the Elder Brethren of Trinity House held that both vessels were to blame in the proportions of four-fifths to the "Aizkarai Mendi" and one-fifth to the "Boree." Costs would follow in the same proportions.

Reasons were given by the House of Lords on Monday for a judgment allowing the appeal from the decision of the Court of Appeal in *The King* v. *International Trustee for the Protection of Bondholders Aktiengesellschaft*, and restoring that of BRANSON, J. The facts cannot be repeated here, but it may be recalled that BRANSON, J., held (1) that the law of England applied to the contract in question, and (2) that payment of bonds issued by British Government in the United States of America in 1917 in gold in the United States had become illegal, and that there was no obligation thereunder to pay in currency an amount calculated to represent the same amount of gold as the specified gold coin would have contained. So much of the bond as related to payment in gold coin in New York had become void, but the obligation to pay in London at the fixed rate of exchange calculated on the nominal amount of the bond remained in full force and effect. The Court of Appeal affirmed this decision on the first point but allowed an appeal therefrom on the second point (80 SOL. J. 913). The judgment of LORD ATKIN is reported in *The Times* of 15th March.

In *Wragg* v. *Samuel Fox & Co. Ltd.*, *Charlesworth* v. *Same* (*The Times*, 16th March), the House of Lords considered the effect of the Various Industries (Silicosis) Amendment Scheme, 1934, which provides that the Various Industries (Silicosis) Scheme, 1911, shall take effect as if the processes specified in para. 2 as the processes to employment in which the scheme should apply included "any operation underground in any coal mine," and held that the new inclusion was that of an additional sub-paragraph and that the amendment was not subject to the proviso in sub-para. (iii), which excludes workmen not during the employment to which the disease is alleged to be due exposed to the dust of silica rock. The appellants had not been so exposed, but they were certified as suffering from silicosis. The House of Lords upheld decisions of the county court that they were entitled to compensation under the Workmen's Compensation Acts and reversed a contrary decision of the Court of Appeal.

In *London Assurance and Others* v. *Clare and Another* (*The Times*, 17th March), the plaintiffs recovered £26,174 paid under a fire insurance policy in response to a claim which a jury found to be fraudulent, though they were unable to say whether or not the fire was caused by a deliberate act of incendiarism on the part of a deceased claimant whose administrators were the defendants. A further claim for damages for costs and expenses incurred in respect of the plaintiffs' investigation into the cause of a second fire, also found to be fraudulent, where incendiarism was not alleged, failed, the damages being held too remote.

Trial by Jury in Civil Actions.

THE Administration of Justice (Miscellaneous Provisions) Act, 1933, made important alterations in the law as to trial by jury in civil actions. The intention was not only to amend, but also to simplify, the law upon this point, but unfortunately this design was not completed by the issue of new rules, which might have been short, clear and simple, and have put beyond any doubt the practical effect of the new legislation. Instead, the old rules were retained, with the addition of a proviso that they should have effect subject to the provisions of the Act. This meant confusion worse confounded, because the two are based upon wholly different principles, and it is difficult to see how far the rules are obsolete, and how far they are to be dovetailed into the new provisions. The decision of the Court of Appeal in *Hope* v. *Great Western Railway Company* (1937), 81 SOL. J. 198, clears up an important point.

The action had been brought for damages for personal injuries, alleged to have been caused by the negligence of the defendants. The master had ordered, upon the summons for directions, that the action should be tried by a judge and jury, and that order was affirmed by the Judge in Chambers (Lewis, J.). Inasmuch, however, as it was desirable that there should be a decision of the Court of Appeal upon the points raised, his lordship gave leave to appeal. The appeal was heard by five judges of the Court of Appeal.

The provisions of s. 6 of the Act of 1933 upon this point are as follows :

> " Subject as hereinafter provided, if on the application of any party to an action to be tried in the King's Bench Division of the High Court made not later than such time as may be limited by rules of court, the court or a judge is satisfied that—
>
> " (*a*) a charge of fraud against that party ; or
>
> " (*b*) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage
>
> is in issue, the action shall be ordered to be tried with a jury unless the court or judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury ; but save as aforesaid, any action to be tried in that Division may, in the discretion of the court or a judge, be ordered to be tried either with or without a jury."

It is to be observed that the section deals first with cases which are to be tried by a jury, unless there are certain specified circumstances which make trial by jury inconvenient. It was argued on behalf of the appellant that in all other cases, which are left to the discretion of the judge, there ought to be trial without a jury, unless there were special circumstances which made it desirable to have a jury. In other words, in cases of fraud, libel, slander and so forth, the onus is upon the party who opposes trial by jury to show that for one of the reasons set out in the section trial by jury is inconvenient ; in other cases, the onus is upon the party asking for a jury to show some special ground why trial by jury is desirable. It is probably correct to say that in practice after the Act of 1933, juries were not given in ordinary cases unless some special reason was shown, but recently the tendency has been to order juries more frequently in cases where there are no special circumstances. The contention of the appellant was borne out to some extent by *Keeling* v. *Cook* (1934), 78 L. J. 306, where in an action for damages for negligence in medical treatment the Court of Appeal, reversing the order of the judge, held that the case ought to be tried without a jury. Lord Hanworth, M.R., said, in speaking of the words of the section : " Though it is not necessary to decide the point in this case, I think that means, inasmuch as the statute is condescending to the particular, that the general practice would be that unless some reason is shown why there ought to be a jury, the discretion would usually be exercised against having a jury."

An examination of Ord. XXXVI, rr. 1–7, which deal with this matter, makes the question much more obscure. By virtue of the proviso added to r. 1 in 1933, these rules are to have effect subject to the provisions of the Act of 1933. Rule 2 provides that in every cause, matter or issue, unless under the provisions of r. 6 of this Order a trial with a jury is ordered, the mode of trial shall be by a judge without a jury. Rule 3 provides that causes or matters assigned by the Act to the Chancery Division shall be tried by a judge without a jury, unless the court or a judge shall otherwise order. Rule 4 deals with the trial without a jury of questions or issues of fact in certain actions. Rule 5 provides that the court or a judge may direct the trial without a jury of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury. Under r. 6, in any cause, matter or issue other than those mentioned in rr. 3, 4 and 5, upon the application (not later than ten days after the close of the pleadings, or where there are no pleadings at the time of or within ten days after the order directing the mode of trial) of any party thereto for a trial with a jury of the cause, matter or issue, an order shall be made for trial with a jury.

There appears to be no case in which r. 6 can now operate, except in the unlikely event of a pure common law action carried on in the Chancery Division. So far as concerns the King's Bench Division, the absolute right to a jury under r. 6 is now taken away, save for the excepted cases. In the excepted cases, the right to a jury is dependent on s. 6 of the Act of 1933, and by virtue of the added proviso to r. 1, application for a jury under that section may be made at any time not later than four days after notice of trial has been given. Under r. 2, trial is to be without a jury, unless trial with a jury is ordered under the provisions of r. 6, and it can well be argued that, since no order will now be made under r. 6, all actions other than the excepted cases of fraud and so forth are governed by r. 2, subject to the terms of s. 6 of the Act, which give the judge a discretion. This interpretation of the rules would almost certainly put the onus upon the party seeking trial by jury.

The Court of Appeal in *Hope* v. *Great Western Railway* held that the words of s. 6 of the Act were clear, that there was no onus either way, but that the matter was entirely in the discretion of the judge. The Master of the Rolls (Lord Wright) said in giving judgment that it was an entirely untrammelled discretion., He could find no justification for putting any limitation on the clear words, as he regarded them, of the section leaving the matter in the discretion of the court or a judge. The appeal was accordingly dismissed. Perhaps it is too much to hope that we may now have some new rules, in place of the half-obsolete provisions which at present obscure the whole of this question.

Company Law and Practice.

Deadlock as a Ground for a Compulsory Winding-up Order.

THE grounds upon which a company may be ordered to be wound up by the court are set out in s. 168 of the Companies Act, 1929. This section contains six sub-sections of which the first five deal with specific acts or omissions which may be alleged as grounds for a compulsory order. Sub-section (6) is a wider section of a residuary nature, and it reads as follows :—

> " A company may be wound up by the court if—
>
> * * * *
>
> " (6) The court is of the opinion that it is just and equitable that the company should be wound up."

It is, of course, common form to include in any petition for winding up an allegation that "in the circumstances it is just and equitable that the company should be wound up," but this sub-section can also be resorted to by itself when none of the other five sub-sections is available to the petitioner. The court is thus given a general power to wind up a company whenever circumstances are brought to its notice which render it undesirable in the opinion of the court that the company should be allowed to continue in existence. In exercising its discretion the court will pay due regard to the wishes of the shareholders who in the normal course of events are ultimately the proper persons to determine questions arising out of the company's business. In order briefly to indicate the uses to which sub-s. (6) may and has been put it is sufficient to instance cases where the substratum of the company has gone and cases where there has been fraud or some less degree of mismanagement. (The whole scope of the sub-section and the cases decided under it were reviewed in some detail by Lord Shaw of Dunfermline in his judgment in the Privy Council in the case of *Loch* v. *John Blackwood, Ltd.* [1924] A.C. 783.) But passing over these cases I want this week to deal with a third class of case which has been held to be covered by this sub-section—cases of deadlock. It is important to observe at once that deadlock in this context must be a complete deadlock which, but for the power of the court to intervene, would bring the company's activities to a standstill or reduce them to a farce. The court will not take it upon itself to settle the squabbles of the directors or shareholders for them, though there are cases (to which I will refer later) where the court has made an order in circumstances where there was not a complete deadlock.

The leading case on this subject is *In re Yenidje Tobacco Company Ltd.* [1916] 2 Ch. 426. The company in this case was a private company which had been formed by two gentlemen, both tobacconists, for the purpose of amalgamating their respective businesses. They were the only shareholders and the only directors of the company, and under the articles they had equal voting rights. The business was a successful one, but in spite of this quarrels arose which, in accordance with the articles, were submitted to arbitration. When the arbitrator made his award the disappointed party refused to give effect to it, and ultimately the atmosphere became so hostile that all communications were broken off and the business of the board could only be conducted with the help of a neutral intermediary. In these circumstances one of the two shareholders and directors presented a petition to wind up the company based on that sub-section of the Companies Act, 1908, which corresponds with the sub-section of the present Act quoted above. Astbury, J., made the order prayed for, and his decision was affirmed by the Court of Appeal. Lord Cozens-Hardy, M.R., in his judgment referred to the law of partnership and pointed out that, in the case of a partnership in which a similar state of affairs prevailed, there could be no doubt but that an action for dissolution could successfully be brought. In the case of a private company completely controlled by two persons who were in substance partners, it was not possible, in the opinion of the learned Master of the Rolls, to say that it was just and equitable that the state of affairs revealed by the evidence should be allowed to continue. Warrington, L.J., stated his opinion in the following words: "I am prepared to say that in a case like the present, where there are only two persons interested, where there are no shareholders other than those two, where there are no means of overruling by the action of a general meeting of shareholders the trouble which is occasioned by the quarrels of the two directors and shareholders, the company ought to be wound up if there exists such a ground as would be sufficient for the dissolution of a private partnership at the suit of one of the partners against the other. Such ground exists in the present case. I think, therefore, that it is just and equitable that the company should be wound up." The effect of this decision is to permit in certain cases the application to companies of the law relating to partnerships. Considerations of space forbid that I should indulge in an examination of partnership law, but before leaving this case I must utter one word of warning. The cases in which it is permissible to trespass in the domain of partnership are strictly limited, and the *Yenidje Case* is not authority for any wider proposition than that stated by Warrington, L.J. The conditions which the learned Lord Justice enumerates must be fulfilled, and if they are not fulfilled it will be idle for a petitioner to turn to a study of "Lindley on Partnership." The petitioner must be "a person who is equally interested with one other person" in the company: per Crossman, J., in *In re Davis and Collett Ltd.*, *infra*, at p. 701.

Now I must pause for a moment to draw a distinction. *In re Yenidje Tobacco Company Ltd.*, *supra*, was a case of deadlock properly so called, and on that ground the company could be wound up by the court under s. 168 (6) of the Act of 1929. There may, however, be cases in which there is no real deadlock but where an order may nevertheless be made under that sub-section by applying the principles based on the analogy with partnerships. *In re Davis and Collett Ltd.* [1935] 1 Ch. 653, was just such a case. There the company had two directors each holding an equal number of shares, but one of them held the position of chairman and as such he was entitled to a casting vote. The directors fell out and the chairman proceeded to use—or rather abuse—his casting vote in order to pass resolutions in opposition to and to the detriment of his co-director, whom he in practice excluded from all participation in the management of the company. The capital of the company was at all material times so owned as to make the company in substance a partnership, each director having an interest equal to that of the other, but by reason of the chairman's casting vote the quarrels of the directors did not produce a cessation of activities amounting to deadlock. On these facts the learned judge was unable to proceed on the ground of deadlock and he stated that he did not propose to decide the case on that ground. But this did not prove fatal to the petitioner's case, for he succeeded on the wider grounds which were indicated in the *Yenidje Case*, *supra*. The preliminary conditions to which Warrington, L.J., referred in that case were found to be fulfilled in the present case and, accordingly, the learned judge then turned to the law of partnership and finding "that this is a case where, if it was a case of partners, I should be bound to come to the conclusion that there ought to be a dissolution of the partnership," he made a compulsory winding-up order.

Cases of deadlock usually occur where a private company is controlled by two persons only, but in *In re American Pioneer Leather Company Ltd.* [1918] 1 Ch. 556, there were three persons interested, and the "deadlock" arose in this way: The share capital of the company was equally divided between the only three shareholders and these persons were also originally directors. One of them, however, resigned his seat on the board and subsequently the two remaining directors quarrelled. The ex-director took sides in the quarrel so that at first sight it would appear that there could be no deadlock since these two could outvote the third at general meetings. But in practice the affairs of the company were, temporarily at any rate, brought to a standstill as one of the directors refused to attend board meetings and it was impossible to get the quorum of two required by the articles. This situation of two against one had been foreseen at the time of the formation of the company and provisions had been included in the articles whereby one party could sell his interest in the company to the other two, and on their refusing to buy, it was further provided that the company should be put into voluntary liquidation. The director, who now found himself in a minority, wanted to be bought out, but his two colleagues refused his offer and, not being able to secure the voluntary liquidation of the company,

he petitioned the court for a compulsory order on the grounds that it was just and equitable that the company should be wound up. The court was, of course, not bound by the provision in the articles requiring the liquidation of the company in the events which had happened, but Neville, J., held that in determining whether it was just and equitable to make a winding-up order he was entitled to take into consideration the original intention of the parties as evidenced by the articles. The report of the judgment is a short one and it is not easy to see exactly on what grounds the learned judge held that the case fell within the sub-section. He says at one point that "things have apparently reached a position of complete deadlock," though he observes that this deadlock between the two directors could be resolved by the interference of the third shareholder, but at the end of his judgment he prefers to rest his decision on the wider grounds of "the position into which the affairs of this company have drifted and the intention of the shareholders from the first that in such circumstances the shareholder who was left in the cold should be entitled to put an end to the company." The deadlock point did not, therefore, become a vital one, and I think that this case well illustrates the whole position as to deadlock. The remedy in cases of deadlock is really only one instance which can be included in the line of cases where an order for winding up is made in circumstances which would justify an order for the dissolution of a partnership. If deadlock can be proved, this at once brings the case within that line of decisions; it is not necessary to go any further; an order will be made. But in cases where deadlock cannot be proved, there may still be grounds for an order though the petitioner will have a more difficult task in alleging and proving a state of affairs sufficiently unjust and inequitable to justify the making of the order. The greater, in other words, includes the less, and the less the petitioner has to allege and prove the better for him.

A Conveyancer's Diary.

[Contributed.]

Wards of Court.

In one sense, as Kay, J., pointed out in *Brown* v. *Collins*, 25 Ch. D. 56, every infant is a ward of court in the sense that it is the object of the court's special solicitude. The term "ward of court" is, however, normally used in a more restricted sense to refer to an infant who is in a peculiar sense under the care of the court.

It is of a good deal more than academic importance to discover in any given case whether the infant in question is or is not a ward of court in this restricted sense. For example, anyone who marries a ward without the leave of the court is liable to be imprisoned for contempt. So also is anyone who takes the ward out of the jurisdiction.

Unfortunately, the law on this subject appears to be in a state of the wildest confusion. The following selected definitions serve to illustrate this proposition. First, there is the following passage from the Annual Practice (1937 Edition, p. 2219): "The expression 'ward of court' has been defined to mean a person properly under the care of a guardian appointed by the Court, but the term has been extended to infants brought under the authority of the Court by an application to it on their behalf, though no guardian has been appointed (*Brown* v. *Collins*, 25 Ch. D., at p. 60). The Court becomes in effect the guardian of such an infant, per Kay, L.J., in *Re Newton*, 1896, 1 Ch. 745." There is a substantially similar definition in "Simpson on Infants" (4th Edition, p. 165).

"Where a suit is instituted for the direction of the Court in relation to the estate or person of an infant and for his benefit, or for the administration of property in which he is interested the infant, whether plaintiff or defendant, becomes a ward of court the instant the suit is commenced" ("Daniell's Chancery Practice," 8th Edition, p. 974).

"A ward of court is an infant respecting whose person or property an action or other proceeding has been instituted in the Chancery Division of the High Court" ("Halsbury," 2nd Edition, Vol. 17, p. 717).

"Halsbury's" definition is backed up by a footnote containing a formidable array of cases stretching well back into the eighteenth century. Certain of them appear to be cited to suggest that the mere fact of an infant being a plaintiff in any sort of Chancery proceeding necessarily makes him a ward. This proposition is very startling, and appears to go outside "Halsbury's" own definition. As the cases are very old, it is suggested that they may safely be disregarded. So far as the definition itself is concerned, it would be interesting to know why there is the reference to the Chancery Division. It may or may not be true that before the Judicature Act only proceedings in the High Court of Chancery made an infant into a ward; but since that Act the Common Law and Chancery courts are all one court, and there appears to be no ground for the distinction.

Now, in most cases where an infant is in fact a ward of court there is no doubt about the matter, because he has been deliberately made so by the recognised method of settling a small sum on him and starting a writ action for administration of the trusts of the settlement in his name. There appears to be no doubt that the mere issue of the writ is sufficient to make the infant a ward, and the necessary applications can be made at once without taking a judgment for administration.

That is the recognised case where the infant *is* a ward. It seems also to be generally accepted that applications as to the custody of infants under the statutory jurisdiction conferred by the Guardianship of Infants Acts, 1886 and 1925, do *not* make the infants concerned into wards. It is also established (*Re Dalton*, 6 de G. M. & G. 201, 204) that an application under the Infant Settlements Act, 1855, does not make an infant a ward.

So much is reasonably clear from everyday practice. But the moment we stray from these well-marked paths we find difficulties. In the first place, what is the position where there is an originating summons asking for administration? Every construction summons does in fact ask, as a matter of form, for administration or execution of the trusts. Does an infant defendant thereby become, by inadvertence, a ward? Or alternatively, what happens if it is desired to make the infant a ward, but a summons is issued for administration of the trusts of the settlement upon him instead of a writ? It is stated in the "Annual Practice" (p. 2220), that Lord Parker once expressed the opinion, at Chambers, that the issue of an originating summons asking for administration did not make an infant party thereto a ward, though the remark was apparently not necessary to the decision of the case before the learned judge. It is submitted that the remark quoted is good law. If it were not there would be no particular reason for the continued use of the procedure by writ, which is in fact normal. Further, the inconvenience would be positively appalling if the issue of a summons containing a request, whether formal or not, for administration had such an effect. At any given moment there must be thousands of infants who are necessary defendants to construction summonses. No one ever imagines that they are wards, and the Chancery Division would be choked with work if it had to treat them as such and supervise their doings. In these cases the court is not performing any function whatever except construing a document, and can really not be expected to take the detailed interest in the welfare of all the infants who may happen to be concerned that it does where the infant is put under its especial charge. On the other hand, it is to be observed that Lord Parker is not stated to have said more than that the issue of the summons

does not make the infant a ward. He said nothing about the effect of an order for administration made on originating summons, and it is submitted that there is no reason to suppose that he meant to say that even where there was an order the infants were not wards. It is suggested that where a summons does issue in an administration order, as can occur, the court by taking over the running of the estate in which the infants are interested would become responsible for their welfare, and they must be treated as wards.

Where it is deliberately sought to constitute an infant a ward of court, it is, of course, very desirable that there should be a sum of money at the disposal of the court to apply for the infant's benefit. Such is probably the reason for the usual adoption of the practice of settling a sum and issuing a writ. But it does not seem that it is really necessary to do so. In the case of *Re M'Cullochs Infants*, 6 I.E.R. 393, there seems to have been a petition asking *simpliciter* that the infants should be made wards, and the Lord Chancellor made an order that they should be, remarking that it seemed to be a very useful jurisdiction. Since the case was decided after full argument, there is no reason to doubt the correctness of the decision. It would seem, therefore, that where the parties do not desire to incur the expense of a settlement, they should ask directly that the infant should be made a ward. It is submitted that a petition would not now be necessary, but the application could and should be made an originating summons under Ord. 55, r. 2 (12). Incidentally, it is worth remarking that the fact that the Lord Chancellor made any order at all on the petition in *Re M'Cullochs*, suggests that it is not true to say that the mere institution of "proceedings" is enough in itself to make the infant a ward. In view of *Re M'Cullochs* and the remark of Lord Parker, it appears that the definition cited from "Halsbury" is too wide. It also seems that that from "Daniell" is open to the same objection, assuming that the word "suit," which does not appear to have any special meaning since the Judicature Act, is intended to mean the same as "proceedings." It seems only to be correct to say that the issue of a *writ* is in itself sufficient.

In *Brown* v. *Collins*, at p. 61, Kay, J., said that he had always understood that the use of the term "ward of court" in its narrow sense "was restricted to cases where the infant either was actually a party to an action in which the property was being administered or was in the position of being a party." There are a number of cases where the problem was whether the infant "was in the position of being a party." These cases are set out in the footnote in "Halsbury" referred to above. It is very difficult to elicit any principle in those decisions, and it will suffice here to point to two strange anomalies which show the confusion of the whole subject. In *Re Hodges*, 3 K. & J. 213, 219, it was decided that payment into court on behalf of an infant under the Trustee Relief Acts, 1847 and 1849, did make the infant a ward; while in *Re Hillary*, 2 Dr. & Sm. 461, it was held that payment in of an infant's legacy under s. 32 of the Legacy Duty Act, 1796, did not. Since both the Trustee Relief Acts and this section of the Legacy Duty Act were repealed by the Trustee Act, 1893, and replaced by s. 42 of the same Act (now s. 63 of the Act of 1925) the present position would appear a trifle obscure. Another quaint distinction is to be found between the cases of *Brown* v. *Collins* and *De Pereda* v. *De Mancha* (19 Ch. D. 491). In the former, it was held that the payment into court of a sum to an account in whose title a class of persons were referred to some of whom were infants did not make them wards, while in the latter, where the only difference was that the infant was directly referred to in the title of the account, it was held that she was a ward.

It seems that the definition given by Kay, J., in *Brown* v. *Collins*, is probably the best of those at our disposal; but it needs certain amplification. For in *De Pereda* v. *De Mancha* there was a mere summons as to custody, prior to the administration proceedings, on which, by the consent of the parties and the suggestion of the Vice-Chancellor, no order was made. It was held that this making of no order was in reality a "partial order" and so made the infant a ward. The fact that the learned Vice-Chancellor thought it necessary to explain that there had been a partial order is a further reason for supposing that the remarks we have made above concerning the effect of issuing a summons are correct. For if the mere issue of a summons relating to the person of an infant had been effective to make the infant a ward, no reliance need have been placed on the existence of a "partial order." Consequently, the definition given by Kay, J., in *Brown* v. *Collins* must be amplified by adding thereto that the making of an order or "partial order" for mere custody is sufficient to make the infant a ward. What exactly the words "partial order" may mean is doubtless obscure. It is submitted that an order on an application made on the principle of *Re M'Cullochs* would be on a comparable footing to a mere order for custody, though it would be more explicit.

It has to be remembered, however, that most applications relating to the persons of infants are now made under the Guardianship of Infants Acts, and there seems to be no question but that infants concerned in such applications are not wards. The principle of *De Pereda* v. *De Mancha* only applies in the rare cases where the inherent jurisdiction is invoked. The same reasoning applies to applications regarding the property of infants. Most of such applications are now made under the authority of sections of the Acts of 1925, and again there seems to be no question of the infants being wards.

The essential point is, I think, this. The court only makes itself responsible for infants, to the extent of making them wards, if its intervention is on a more or less permanent basis. Where there is an application as to some question of construction or some administrative transaction under the Property Acts, or where some point of custody comes up for summary disposal under the Guardianship of Infants Acts this position does not arise. On the other hand, it does arise where the court is asked explicitly to make the infant a ward, or has the property of the infant in its control, and the court then assumes full responsibility for the ward's welfare.

Landlord and Tenant Notebook.

The Meaning of "The Occupier."

THE expression "the occupier" occurs in a large number of statutes. Sometimes it is partly defined, sometimes not defined at all. When the interpretation clause omits to mention the expression, it will be usually found that the statute reads as if there could be no difficulty in applying it; also, that it speaks of "the occupier," not of "any occupier" or of the "occupier or occupiers," as if every parcel of land necessarily had but one occupier. A recent example is afforded by the provisions of the Housing Act, 1936, which impose responsibility for overcrowding on "the occupier" of every dwelling-house used or of a type suitable for use as a habitation by members of the working classes, but do not say how that occupier is to be ascertained.

The question may arise, under this and other enactments, whether a tenant in actual possession is necessarily "the" occupier. To illustrate difficulties which may occur, I will discuss some aspects of an interesting income tax case which was fought out a few years ago: *Back* v. *Daniels* [1925] 1 K.B. 526, C.A.

The respondents in that case, a London firm of potato merchants, had been assessed (in London) under Sched. D in respect of profits derived from the sale of Lincolnshire potatoes. They claimed the right to be assessed under

Sched. B as occupiers of the land on which those potatoes were grown, and the matter was taken to the Court of Appeal, where both Law Officers represented the Crown.

The agreement on which they relied was, as Scrutton, L.J., observed, difficult to class from a legal point of view. The other party was a tenant farmer; it described him as landlord, and the respondents as tenants. It gave them possession for the purpose of growing potatoes from the date of the agreement until the potatoes were fully ripe; they were to provide seed and manure and labour for planting and taking up. But the farmer was to plough and cultivate the land, supply horse labour, cart the manure from, and the potatoes to, the nearest railway station; he was to protect them from frost, supplying and spreading the necessary straw; and he agreed to occupy the land until the potatoes were cleared. The "rent" was fixed by reference to acreage, specified amounts being made payable at specified dates, but instalments were to be accelerated if more acreage had been cleared before those dates.

The farmer also undertook to procure his landlord's consent if necessary and to pay his rent, and not suffer any distress or execution to be levied on the potatoes. The latter provision suggests that the respondents were themselves not too sure that their status was to be that of tenants entitled to claim privilege for their property.

Now the Income Tax Act, 1918, is one which does say something about the meaning of "occupier"; it provides (Sched. A, No. VII, r. 2) that "Every person having the use of any lands or tenements shall be deemed to be the occupier thereof." It is clear that the question is not one of title to land from the viewpoint of the Law of Real Property, hence the question whether the unusual agreement outlined above amounted in law to a tenancy agreement was not in issue. If it had been, I think a case could have been made for the proposition that it answered that description. The fact that many obligations not usually imposed upon landlords were undertaken by the farmer would not in itself prohibit such a construction. Parcels were defined, rent provided for, and the term, if not definite, was ascertainable; for potatoes will fully ripen in the fullness of time. But on the question whether exclusive possession of the premises was conferred on the "tenants," it might well have been that the proposition would have broken down.

It was, however, not necessary to decide whether the respondents' interest amounted to an estate in law. In the light of many authorities on rateable occupation, which according to Scrutton, L.J., was probably the same thing as the occupation defined by the Income Tax Act, it was clear that the respondents were occupiers. They could, despite the provision that the farmer should remain in occupation till the potatoes were cleared (a provision designed to make him rateable; but not having that effect, according to Pollock, M.R.), have sued him or anyone else who interfered with the crop for trespass to land. Exclusive occupation for fiscal purposes was not necessarily the same thing as a power to exclude everyone else; it meant the exclusive power of using rights given in the soil. As no one else could grow potatoes, the respondents were occupiers.

It would follow, from the judgments in the above case, that a tenant may be in one of three positions as regards occupying the demised premises; he may not occupy them at all, he may be their sole occupier, or he may share occupation with someone else. It is important to note that while the respondents in the case contended, the court did not decide, that they were "the" occupiers. Pollock, M.R., "did not shrink from the result that there might be two persons who might be chargeable as occupiers under Sched. B" (*cf. R.* v. *Caxton Floors, Ltd.*, discussed on p. 188 of the issue of 6th March last).

Statutory enactments which speak of "owner or occupier" or otherwise contrast the two, may have given rise to the notion that when premises are let, the tenant is necessarily their occupier. An early case, *The Company of Ironmongers Case* (1677), Poll. 207, raised a question of occupation under a statute levying "hearth-tax." The levy was in respect of houses, but a proviso declared that only the occupiers, and not landlords who had let and demised the houses, should be liable. The Ironmongers' Company had built some houses, but not yet let them; it was held that the proviso did not protect them, for it was designed to prevent landlords whose tenants absconded from being held liable as occupiers. The statute concerned gave no definition; nor have the Rating Acts provided one; but it is noticeable that the Rats and Mice (Destruction) Act, 1919, enacts that for its purposes, owners are responsible when premises are unoccupied.

In the absence of definition, it would seem that control is the decisive factor. When holding that the manager of a cinematograph theatre was not liable as occupier, while his employer was, under the Cinematograph Act, 1909, all three judges who heard the appeal in *Bruce* v. *McManus* [1915] 3 K.B. 1, used the word "control."

The Factory and Workshop Act, 1901, makes "the occupier" of a factory liable for several things, but does not define him. This was done in *Ramsay* v. *MacKie* [1904] 7 F. (Ct. of Sess.) 106, by Lord M'Laren, who gave us: "The person who runs the factory."

Now the purpose of rating and income tax enactments is to collect revenue, and that of the Cinematograph Act and the Factory Act is to ensure safety. It accords with such objects that the right to use in the one case, and the right to manage in the other, should carry with them the responsibilities created. But it seems to me that an enactment dealing with residential property should have defined the expression "occupier," or at least given some indication whether it is the tenant in possession if the property be let. "The" occupier is made responsible for overcrowding of working-class houses; is a "member of the working classes" who takes a house and lives in it with his family "the occupier"? He "has the use of it" (see *Back* v. *Daniels*, *supra*), but so have others. He does not, to any appreciable extent, "run" it (see *Ramsay* v. *MacKie*, *supra*). Whether he can be said to "control" it (see *Bruce* v. *McManus*, *supra*) when his wife wishes to add to the family income by taking in a lodger is a question to be answered in the light of the circumstances of each particular case, and the circumstances will frequently demand an answer in the negative. I am aware that this sounds like music-hall humour; but the said humour bears some relation to real life. And the practice of taking in lodgers has often been the cause or occasion of property deteriorating into slums, the very evil which the overcrowding legislation is intended to remedy.

Consequently, I can foresee an occasional racking of municipal brains when it comes to deciding whom to serve with a notice to abate overcrowding, or against whom to proceed under the Small Tenements Recovery Act, 1838, as prescribed by the Housing Act, 1936, s. 66.

Our County Court Letter.

MORTGAGES OF CONTROLLED HOUSES.

In a recent case at Dewsbury County Court (*The Trustees of Ellis* v. *The Trustees of Parker*) an application was made under the Increase of Rent, etc., Act, 1920, s. 7, proviso (ii), for the calling in of a mortgage for £1,000 on a leasehold house in Mayman Lane, Batley, and eighteen back-to-back cottages, also in Batley. The applicants' case was that the mortgage could not be transferred owing to depreciation of the security, as the adjoining property had been the subject of a notice under the Housing Act, 1930, s. 19. The respondents' case was that the above section only applied to the diminution or jeopardy

of the security by effluxion of time. No such evidence was available, as the mortgage was not given until 1927, and only sixty years had run of a term of 999 years. His Honour Judge Stewart observed that the houses were built of stone, and were in good repair. It was not sufficient to show that the property would fetch less than a certain sum in the market, and the applicants could only succeed on showing that the property was of a type which would have to go within a reasonable time. There was no evidence that the property would be involved in any general scheme, and it probably had as much security value as in 1927. The respondents were therefore correct in their interpretation of the section, and judgment was given in their favour with costs on Scale C.

ENTICEMENT OF MAIDS.

In a recent case at Leicester County Court (*McMahon* v. *Schutzberger and Simpson*) the claim was for £27 as damages against the first defendant for breach of contract, and for £50 against the second defendant as damages for enticement. The first defendant counter-claimed £50 as damages for wrongful imprisonment and assault. The plaintiff had engaged the first defendant, as a maid, on a six months' contract. Before the expiration of that period, the first defendant announced that she was about to leave and enter the service of the second defendant—a neighbour of the plaintiff. As there had been some previous trouble about the notification of the first defendant's address, she was locked in her room by the plaintiff, who rang up the police. The next day, the first defendant left, and entered the employ of the second defendant. The first defendant's case was that, owing to the long hours, she desired to leave the plaintiff's employ, and accordingly gave notice. She was thereupon shut in her room, and her arm was hurt in her effort to escape. The second defendant's case was that, having heard that the first defendant was unhappy, she advised her to give the plaintiff a month's notice. Although the second defendant had given the first defendant shelter, she had advised her (by letter) to complete her contract. His Honour Judge Galbraith, K.C., gave judgment for the plaintiff for £10 10s. against the first defendant, and for the first defendant for 5s. on the counter-claim for assault. Judgment was given for the second defendant on the enticement issue. See *Sim* v. *Stretch* (1936), 52 T.L.R. 670 (80 Sol. J. 703).

THE DEFINITION OF "BELOW COST."

In the recent case of *Clark* v. *Zimmerman's Ltd.*, at Hull County Court, the claim was for the return of £69 paid under an agreement to buy the stock of the defendants, who had traded as furniture dealers until May, 1936. The plaintiff had agreed to buy the defendants' stock, and the purchase price was to be "10 per cent. below cost of furniture then in stock and 2½ per cent. below cost in respect of £186 worth of furniture on order, but not in stock at the time the agreement was signed." The total price was £1,819 19s. 9d., and a round figure of £1,800 was accepted by the defendants. The plaintiff contended, however, that "below cost" meant below the price actually paid by the defendants, and was to be calculated after deducting trade discounts and discounts for cash payments. The defence was that "cost price" meant invoice price, less trade discount, but not less any discount earned by prompt payment. The plaintiff was not entitled to the benefit of any discount earned by payment of cash, which was sometimes paid before delivery. His Honour Deputy Judge Perks held that "below cost" did not mean below "cost price" as known in the trade, as contended by the defendants. The phrase "below cost" meant below the price actually paid, even if further discounts had been earned for cash. Judgment was given for the plaintiffs for the above amount, and also for £4 10s. 6d. in respect of damage to goods, with costs.

To-day and Yesterday

Legal Calendar.

15 March.—On the 15th March, 1773, Mr. Baron Adams died on circuit, at Bedford, of gaol fever contracted a fortnight before while presiding at the Old Bailey. He had been a judge for twenty years, and Chief Justice Wilmot, who had known him intimately throughout his career at the Bar, declared that he was "a very good lawyer and an excellent judge, having every quality to dignify the character. I never saw him out of temper in my life."

16 March.—On the 16th March, 1757, Mr. Justice Birch died after over ten years' service in the Court of Common Pleas. He was about sixty-seven years old. He came particularly into public notice when he carried an address to the King on the occasion of Prince Charlie's rebellion, and it was then that he received the honour of knighthood. In the next year he was raised to the Bench. It was in Southgate, now swallowed by London, but then a rural retreat, that he had his home.

17 March.—Francis Buller, born at Downes, near Crediton, on the 17th March, 1746, was the third son of James Buller, of Morval, who represented Cornwall in Parliament for eighteen years. He made a good and early start in the world, for at the age of seventeen he married an heiress, Susannah Yarde (whose name linked with his own is still borne by his descendant, Lord Churston). Early achievement seemed to come to him almost as a matter of course, for he was a King's Counsel at thirty-one and a judge at thirty-two. For twenty-two years he sat in the King's Bench, and later in the Common Pleas. It was he who first really developed the system of pupils at the Bar.

18 March.—At the Derby Assizes, on the 18th March, 1835, a man was tried before Littledale, J., for stealing a tub. The jury having conferred for a time resumed their seats, but being asked for their verdict said they were in doubt whether or not the prisoner stole the tub. Having been told to confer again, they were again asked whether they found the man guilty. The foreman replied that they thought he was, but recommended him to mercy. Judge: "On what ground, gentlemen?" Foreman: "We leave that to yourself, my lord." Judge: "No, no, gentlemen, you must say." Foreman: "We hear he was in possession of the tub, but no one says they saw him take it." Judge: "Gentlemen, if you have any doubt, you had better give him the benefit of it." A Juror: "I think it would be best to return him quit of the crime." (Laughter.) Verdict—Not Guilty.

19 March.—On the 19th March, 1747, Simon Fraser, Lord Lovat, was condemned to death in the House of Lords for his part in Prince Charlie's rising.

20 March.—A particularly horrible murder trial took place at the Carlow Assizes on the 20th March, 1830, when Catherine Smith, a farmer's wife, was tried for killing her husband, and her lover, who had helped her, was the chief witness for the Crown. She had made him get up in the middle of the night to look after the sheep, and in the field the lover had waylaid him with a pitchfork, seriously wounding him. He lingered a few days, and the woman finally dispatched him, giving him poison and smothering him. On her conviction she showed great fortitude.

21 March.—On the 21st March, 1850, Mercy Newton, a young woman of thirty, was for the third time tried at the Shrewsbury Assizes for the murder of her aged mother, the jury having twice previously disagreed There was no doubt that she had long wished for the death of the old woman, whose survival was keeping her out of a sum of money. She had beaten her, starved her, and even

attempted to strangle and drown her. When, therefore, one morning Mrs. Newton was found burnt to death, the sofa on which she had slept having caught fire, more than suspicion fell on her daughter. Nevertheless, the jury at last acquitted her.

THE WEEK'S PERSONALITY.

Never did there appear before the House of Lords so strange a figure as Simon Fraser, Lord Lovat, Jacobite intriguer for more than half a lifetime, eighty-year-old patriarch of the Scottish clans. He came to answer for his part in Prince Charlie's rising, and when Lord Hardwicke, the Lord High Steward, sentenced him to be beheaded, all the old primitive life of the Highlands was sentenced to death with him. An odd but impressive figure he was "loaded with more clothes than a Dutchman with his ten pair of breeches; he is tall, walks very upright considering his great age, and is tolerably well shaped; he has a large mouth and a short nose with eyes much contracted and down-looking, a very small forehead almost covered with a large periwig." Such was the man who in the territory of Lovat had kept a rude but almost royal state. In many respects his long career of intrigue had led him into treacherous dealing, but in the face of death he showed the calmest courage, behaving with "uncommon gaiety and jocoseness." An immense crowd attended his execution, and when Lord Lovat saw it, he exclaimed: "Why should there be such a bustle about taking off an old grey head that cannot get up three steps without two men to support it?" So died the last great chieftain.

A LONDON MEMORY OF A BIGAMOUS DUCHESS.

If London had any sense of perspective, proportion, or of its own true value, it would not complacently suffer the imminent destruction of Kingston House at Prince's Gate. Built in 1770, it takes its name from that Duchess whose trial for bigamy was the sensation of her generation. But to the thoughtful lawyer, she is perhaps more remarkable for the experiment in easy divorce which was the prelude to it. If only the obsolete weapon of the suit for jactitation had not broken in her hand, how might it not have been furbished up to carve our divorce laws into a very different shape. It was when she finally decided to finish the long-drawn out farce of a secret marriage, which she and her rather unpleasant husband were both equally anxious to terminate, that she dug up this fossil form of action out of the depths of Doctors' Commons and caused her proctor to allege and in law articulately propound that the right honourable Augustus John Hervey falsely and maliciously boasted that he was married to her to the great danger of his soul's health, praying that she might be pronounced, decreed and declared a spinster, and the said Augustus enjoined perpetual silence.

THE VAGARIES OF JACTITATION.

The husband made no serious effort to defend the suit, perpetual silence was duly imposed on him, and he was admonished to desist from his boasting. The lady being declared a spinster, free from all matrimonial contracts, proceeded to marry the Duke of Kingston and, but for the sequel, she would have qualified by her pioneer efforts for a statue in the Divorce Division. But when she found herself facing a charge of bigamy, the Attorney-General had little mercy for the jactitation suit. He said: "The injunction of perpetual silence continues no longer than till the party chooses to talk again, and the person to whom he may with the most perfect safety repeat his assertions is the judge who enjoined him silence. . . . It is a suit which has no termination. You may reverse the sentence to-morrow, that the next day, and a third after that, and the suit is in its nature eternal. An ingenious person among the bystanders has calculated how many wives a man that had a taste for polygamy might marry with impunity, and I think he made out, according to the probable duration of such a suit, that a man between twenty-eight and thirty-five might with good industry marry seventy-five wives by sentences of the Ecclesiastical Courts, each sentence standing good till reversed." The Lords did not like the sound of the jactitation suit and convicted the lady.

Obituary.

MR. K. DOCKRELL, K.C.

Mr. Kenneth Dockrell, K.C., died in Dublin on Thursday, 11th March. He was educated at Trinity College, Dublin, and was called to the Irish Bar in 1910, taking silk in 1934. He was called to the English Bar by Gray's Inn in 1919.

MR. C. A. JAMES, K.C.

Mr. Charles Ashworth James, K.C., of Old Buildings, Lincoln's Inn, died on Friday, 12th March, at the age of seventy-eight. Mr. James, who was educated at Rugby, was a Fellow of Hertford College from 1881 to 1892. He was called to the Bar by Lincoln's Inn in 1884, and took silk in 1926. He was a Bencher of his Inn.

MR. J. S. ANDERSON.

Mr. John Sloane Anderson, solicitor to the London Passenger Transport Board, died at Mentone on Friday, 12th March, at the age of forty-eight. Mr. Anderson, who was educated at Radley, was admitted a solicitor in 1911. He became Assistant Solicitor to the Metropolitan Railway in 1914, Chief Legal Adviser and Solicitor in 1929, and General Manager in 1931. On the formation of the London Passenger Transport Board in 1933 he was appointed Secretary, Treasurer and Solicitor to the Board.

MR. C. H. CLAYTON.

Mr. Charles Hoghton Clayton, retired solicitor, of Long Ditton, Surrey, died on Wednesday, 17th March, in his 102nd year. Mr. Clayton was the son of Mr. John Clayton, who practised as a solicitor at Lancaster Place, Strand, W.C. He entered his father's office in 1854, and in 1866 he became a partner. He retired at the age of eighty.

MR. E. EVANS.

Mr. Enoch Evans, solicitor, senior partner in the firm of Messrs. Enoch Evans & Sons, of Walsall, died on Sunday, 14th March, in his seventy-eighth year. Mr. Evans was admitted a solicitor in 1884. He was elected to the Walsall Town Council in 1911, and became an alderman in 1927. He was mayor in 1921.

MR. G. S. MASON.

Mr. George Stewart Mason, solicitor, a partner in the firm of Messrs. Simpson & Mason, of Rushden, Northants, died on Friday, 12th March, at the age of seventy-five. Mr. Mason was admitted a solicitor in 1885.

MR. F. C. SLATER.

Mr. Francis Cookesley Slater, solicitor, of Boreham Wood, died on Friday, 12th March, at the age of seventy-five. Mr. Slater was admitted a solicitor in 1882.

The next examinations of the London Association of Certified Accountants will be held on 1st, 2nd and 3rd June, in Belfast, Birmingham, Bristol, Cardiff, Cork, Dublin, Edinburgh, Glasgow, Hull, Leeds, Liverpool, London, Manchester, Newcastle-on-Tyne, Nottingham, Plymouth and Sheffield. Women are eligible under the Association's regulations to qualify as certified accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the offices of the Association, 50, Bedford Square, London, W.C.1.

Notes of Cases.

Judicial Committee of the Privy Council.

Attorney-General for British Columbia *v.* **Attorney-General for Canada and Others.**

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright, M.R., and Sir Sidney Rowlatt. 28th January, 1937.

CANADA — CONSTITUTIONAL LAW — NATURAL PRODUCTS MARKETING—DOMINION LEGISLATION AS TO—TRANSACTIONS COMPLETED WITHIN PROVINCE AFFECTED—VALIDITY—BRITISH NORTH AMERICA ACT, 1867 (30 & 31, Vict., c. 3), s. 91 (2)—NATURAL PRODUCTS MARKETING ACT, 1934, S.C. (24 & 25 Geo. 5, c. 57).

Appeal by special leave from a judgment of the Supreme Court of Canada, dated the 17th June, 1936, unanimously answering in the affirmative the following question referred to the court by order of the Governor-General in Council: "Is the Natural Products Marketing Act, 1934, as amended by the Natural Products Marketing Act Amendment Act, 1935, or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada?"

The Act provides for the establishment of a Dominion Marketing Board. The powers of the board include powers to regulate circumstances in which natural products to which an approved scheme relates shall be marketed, and the manner in which they shall be distributed; also the quantity, quality, grade or class of the product that shall be marketed by any person at any time; and to prohibit the marketing of any of the regulated products of any grade, quality or class.

LORD ATKIN, delivering the judgment of the Board, said that there could be no doubt that the provisions of the Act covered transactions in any natural product which were completed within the Province, and had no connection with inter-Provincial or export trade. It was, therefore, plain that the Act purported to affect property and civil rights in the Province, and that, if not brought within one of the classes of subjects enumerated in s. 91, must be beyond the competence of the Dominion Legislature. It was sought to bring the Act within head (2) of s. 91 of the British North America Act, 1867, namely, "The Regulations of Trade and Commerce." Emphasis was laid on those parts of the Act which dealt with inter-Provincial and export trade. But the regulation of trade and commerce did not permit the regulation of individual forms of trade or commerce confined to the Province. They (their lordships) agreed with the passage in the Chief Justice's judgment, where he said ([1936] Can. S.C.R., at p. 412) that the enactments in question, in so far as they related to matters which were in substance local and Provincial, were beyond the jurisdiction of Parliament, and they found it unnecessary to add anything. The judgment of the Chief Justice in this case was conclusive against the claim for validity on that ground. In the result, therefore, there was no answer to the contention that the Act in substance invaded the Provincial field and was invalid. It was urged, however, that portions of the Act were within the competence of Parliament. It appeared to their lordships that the whole texture of the Act was inextricably interwoven, and, as the main legislation was invalid as being in pith and substance an encroachment upon the Provincial rights, the portions of the Act referred to must fall with it as being in part merely ancillary to it. The appeal would be dismissed.

COUNSEL: *J. W. de B. Farris*, K.C., and *Wilfrid Barton*, for the Attorney-General for British Columbia; *R. S. Robertson*, K.C., *L. S. St. Laurent*, K.C., *C. P. Plaxton*, K.C., *Peter Wright* and *R. St. Laurent*, for the Attorney-General for Canada; *A. W. Roebuck*, K.C. (Attorney-Gentral for Ontario), and *I. A. Humphries*, K.C., for the Attorney-General for Ontario; *Gustave Monette*, K.C., for the Attorney-General for Quebec; *J. B. McNair*, K.C. (Attorney-General for New Brunswick), and *Frank Gahan*, for the Attorney-General for New Brunswick.

SOLICITORS: *Messrs. Gard, Lyell and Co.; Messrs. Charles Russell and Co.; Messrs. Blake and Redden; Messrs. Lawrence Jones and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Commissioner of Income Tax, United & Central Provinces *v.* **Badridas Ramrai Shop.**

Lord Russell of Killowen, Lord Macmillan and Sir John Wallis. 19th February, 1937.

INDIA—INCOME TAX—UNSATISFACTORY RETURN OF INCOME MADE BY TAXPAYER—ASSESSMENT MADE BY OFFICER—"TO THE BEST OF HIS JUDGMENT"—MEANING—SUFFICIENT CAUSE SHOWN BY TAXPAYER FOR NON-COMPLIANCE WITH NOTICE TO PRODUCE EVIDENCE—WHETHER RELEVANT TO EXCUSE FAILURE TO COMPLY WITH NOTICE UNDER A DIFFERENT SECTION TO PRODUCE ACCOUNTS—INDIAN INCOME TAX ACT, 1922 (XI of 1922), ss. 22, 23, 27, 30, 66 (2).

Appeal from a judgment of the Court of the Judicial Commissioner, Central Provinces, on a reference under s. 66 (2) of the Indian Income Tax Act, 1922.

On the 29th April, 1931, the respondent taxpayer was served with a notice under s. 22 (2) of the Act requiring him to furnish a return of his income. On the 27th July, the respondent furnished the return on a printed form, stating only: "Rs.1,700 Approximate amount of loss." That return being in his opinion unsatisfactory, the income tax officer, on the 8th September, 1931, served on the respondent a combined notice (*a*) under s. 22 (4), requiring him to produce or cause to be produced at the officer's office his accounts for three years, and (*b*) under s. 23 (2) either to attend or to produce or cause to be produced at the office any evidence on which he might rely in support of his return of income. The latter notice is provided by s. 23 (2) for the event that the officer has reason to believe that the return under s. 22 is incorrect or incomplete. The date specified in the combined notice being the 14th September, 1931, the respondent on the 12th obtained an adjournment until the 19th October, for which date a new combined notice was issued on the 23rd September. On the 19th October, the respondent applied in writing for a further adjournment, which was refused. No accounts having been produced, the officer, acting as provided by s. 23 (4) proceeded to make the assessment to the best of his judgment. No accounts being available, he took into consideration *inter alia* local repute as to the respondent's business, and estimated that the respondent's income was Rs.1,000. By s. 27, where an assessee within the prescribed time satisfies the officer that he was prevented by sufficient cause from complying with the notice under s. 22 or those under ss. 22 (4) or 23 (2), the officer is to cancel the assessment and make another under s. 23. The respondent's application for cancellation was heard with witnesses by the officer in December, 1931, and refused. The only excuse offered by the respondent for failure to produce accounts was that he could not produce them in person. As he could have sent them by messenger, he failed to comply with s. 27. The respondent appealed from that refusal to the Assistant Commissioner. The appeal was dismissed on the ground that the respondent had failed to show that he had sufficient cause for withholding the accounts on the 19th October, and the assessment was confirmed under s. 31. The respondent then applied to the Commissioner for a reference under s. 66 (2) to the High Court. The Judicial Commissioners, agreeing with the Assistant Commissioner, held that the notice under s. 22 (4) and the summary assessment under s. 23 (4) were legal. Disagreeing with him, they held that the omission to make and communicate to the respondent a definite order refusing an adjournment of the hearing of the 19th October, 1931, was a failure to observe an elementary rule, which failure might have

caused the respondent's failure to comply with the notice of production. They also held that the respondent had shown sufficient cause for non-compliance with the notice under s. 23 (2) (the notice as to evidence, and not that under s. 22 (4) as to production of accounts). They further held that no assessment by the income tax officer would be made " to the best of his judgment " within the meaning of s. 23 (4), unless (i) a local inquiry were held to ascertain the assessee's income for the previous year, and (2) the officer placed on the record a note of the details and results of his inquiry. They accordingly held that the assessment was not made " to the best of his judgment " within the meaning of s. 23 (4).

LORD RUSSELL OF KILLOWEN, delivering the judgment of the Board, said that their lordships disagreed with the Judicial Commissioners except for their holding that the officer was entitled to make an assessment *ex parte* under s. 23 (4). The respondent had necessarily failed, on the undisputed facts, to satisfy the officer that he had had sufficient cause for not complying with the notice under s. 22 (4). The application for cancellation under s. 27 was doomed to failure, as also that under s. 30. The questions involved being ones of pure fact, no reference with regard to them should have been made under s. 66 (2). Under s. 23 (4), the failure to comply with the notice compelled the officer to make an assessment which must, in the circumstances, stand. It was irrelevant that the respondent had sufficient cause for not complying with the notice under s. 23 (2) (as to production of evidence). Their lordships were, further, unaware of any rule by which the officer was bound or ought to announce beforehand how he proposed to deal with an adjournment (i.e., that on the 19th October, 1931). As to the question whether the assessment had been made to the best of the officer's judgment within s. 23 (4), their lordships found it impossible to extract from the language of the Act the two requirements laid down by the Judicial Commissioners. For making what he believed to be a fair estimate of the proper assessment, he must be able to take into consideration local knowledge and repute, and his own knowledge of previous returns made by the assessee. The necessary guesswork must be honest. No justification for the suggested requirements could be found in any of the authorities cited. *Krishna Kumar* v. *The Commissioner* (5 I.T.C. 295), seemed to be the foundation for the two requirements. But their lordships could find no justification for attributing to the High Court in that case the view that those requirements must be satisfied. Other authorities cited merely affirmed that the officer must exercise judgment, and not act on caprice. Their lordships agreed with the views expressed by the High Court at Rangoon in *Abdul Bari Chowdury* v. *Commissioner of Income Tax, Burma* (I.L.R., 9 Rangoon 281). The appeal must succeed and the assessment stand.

COUNSEL: *W. Wallach*, for the appellant; there was no appearance by or on behalf of the respondent.

SOLICITORS: *The Solicitor, India Office.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Diamantidi *v.* Grosvenor Securities Ltd.

Slesser and Scott, L.JJ., and Farwell, J.
4th and 5th February, 1937.

CONTRACT—SALE OF SHARES—CONDITION—PURCHASER'S ACCOUNTANT TO BE SATISFIED THE COMPANY WAS SOLVENT —MEANING.

Appeal from a decision of Macnaghten, J.

In November, 1935, the plaintiff, who was entitled to 50,000 shares in a certain company, entered into an agreement to sell them to the defendants at 12s. 6d. each. There was a provision for the payment of a deposit. It was further provided that the vendor should authorise the purchasers' accountant to investigate the affairs of the company and the agreement should be subject to his being satisfied that the financial position of the company was solvent. After due investigation, the accountant reported to the purchasers' solicitors that he was not satisfied that the company was solvent, and the purchasers refused to pay the deposit. The vendor brought an action claiming it. At the hearing, the accountant was called as a witness for the defendants. Macnaghten, J., having examined the basis of his conclusions, gave judgment for the plaintiff.

SLESSER, L.J., allowing the defendants' appeal, said that the accountant having made proper investigation and stated that he was not satisfied, the contract came to an end. His lordship referred to *Goodyear* v. *Weymouth and Melcombe Regis Corporation*, 35 L.J. C.P. 12, at p. 17. It was irrelevant to inquire into the grounds on which the accountant stated he was not satisfied, and the judge was not entitled to go into them. The question under the contract was not whether the company was solvent, but whether the accountant was satisfied as to its solvency.

SCOTT, L.J., and FARWELL, J., agreed.

COUNSEL: *Stable*, K.C., and *H. Malone*; *Field*, K.C., and *Gumbel*.

SOLICITORS: *Erskine & Co.*; *Kenneth Brown, Baker, Baker.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Heaps *v.* Perrite Ltd.

Greer, Slesser and Greene, L.JJ.
19th February, 1937.

DAMAGES — ACCIDENT — MACHINE OPERATIVE — LOSS OF HANDS—MATTERS FOR CONSIDERATION.

Appeal from a decision of Swift, J.

A machine hand, aged 17, while working in a factory, sustained injury resulting in the amputation of his hands some inches above the wrists. In an action by him against his employers for damages, Swift, J., awarded £10,000. The defendants appealed on the ground that they were excessive.

GREER, L.J., in dismissing the appeal, said that the judge was not bound to consider merely by how much the boy's earning power had been diminished. He had to consider that even with artificial limbs he would be handless all his life and unable to do anything for himself. His pain and suffering had to be taken into account, besides the necessity of having assistance in the various things he had to do. The joy of life would be gone. He could not have the usual forms of recreation which appealed to a working man. The court could not interfere with the award.

SLESSER and GREENE, L.JJ., agreed.

COUNSEL: *Gorman*, K.C., and *B. Ormerod*; *Goldie*, K.C., and *J. S. Lloyd*.

SOLICITORS: *William Hurd & Son*, agents for *Blackhurst, Parker & Blackhurst*, of Preston; *Helder, Roberts, Giles & Co.*, agents for *John A. Behn, Twyford & Reece*, of Liverpool.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Byrne *v.* Deane.

Greer, Slesser and Greene, L.JJ. 2nd March, 1937.

LIBEL AND SLANDER—LAMPOON ON CLUB NOTICE BOARD—PREVIOUS REMOVAL OF AUTOMATIC MACHINES ON POLICE COMPLAINT—ALLEGED INSINUATION THAT PLAINTIFF HAD REPORTED PRESENCE—WHETHER DEFAMATORY.

Appeal from a decision of Hilbery, J.

The plaintiff complained that a doggerel lampoon put up by some unknown person in a golf club of which he was a member was defamatory of him, and brought an action against the directors. The lines which were put up shortly after the removal of certain automatic machines from the club as a result of a police complaint were as follows:—

"For many years upon this spot
You heard the sound of a merry bell.
Those who were rash and those who were not
Lost and made a spot of cash.
But he who gave the game away
May byrnn in hell and rue the day."

The plaintiff complained that it was thus insinuated that he had reported to the police the presence of the machines, that he had been guilty of disloyalty to his fellow members, that he was devoid of all true sporting spirit, and that he was unfit for other members to associate with. Hilbery, J., awarded him 40s. damages to show that he was justified in bringing the action and did not go to the police, though he established no damage. The defendants appealed.

GREER, L.J., delivered a dissenting judgment.

SLESSER, L.J., allowing the appeal, said that the words could not be defamatory apart from the innuendo. His lordship understood it to be alleged that the defendants meant that all the consequences stated in the innuendo were due only to the plaintiff having reported the presence of the machines. But it could not be held that to say of a man that he had reported to the police acts wrongful in law could be said to be defamatory of him in the minds of the public generally. So long as the law protected the common informer, it could not be defamatory to call a person by a name which suggested that he was promoting the interests of the law. The words were incapable of defamatory meaning.

GREENE, L.J., agreed.

COUNSEL: *Beresford*, K.C., and *H. J. Brown*; *Flowers*, K.C., and *G. Thesiger*.

SOLICITORS: *Gordon Gardiner, Carpenter & Co.*, agents for *F. H. Carpenter & Veale*, of Brighton; *Barnes & Butler*, agents for *Hillman & Sons*, of Seaford.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re General Preserving Co. Ltd.

Bennett, J. 2nd February, 1937.

COMPANY—PRIVATE COMPANY—LOAN BY DIRECTOR—PART CREDITED BACK TO COMPANY TO COVER LOSS—AGREEMENT IN THE EVENT OF LIQUIDATION—BALANCE SHEET SIGNED BY DIRECTOR—EFFECT ON TRANSACTION.

The nominal capital of a private company was divided into 5,000 £1 shares, 4,990 of which were held by a director, one Theodore Sontzos, to whom it was indebted to the extent of £3,400. In 1934, its trading having resulted in a loss of £1,612 6s. 8d., Sontzos in May, 1935, agreed (as appeared from the minutes of a board meeting) to cover this amount, and a sum equal to it was with his concurrence credited back to the company and his loan account debited accordingly. He undertook not to require repayment of it, save out of available profits, but reserved the right in the event of a liquidation to rank with other creditors for it. In the balance sheet which he signed his loan account, included (*inter alia*) on the liabilities side, showed £1,787 13s. 4d., the amount remaining after debiting the sum credited back to the company. The balance sheet also included a statement with regard to the general profit and loss account. The net loss for the year was shown £1,612 6s. 8d., "less T. Sontzos' loan fund £1,612 6s. 8d.," so that these figures cancelled each other out. In 1936, the company went into voluntary liquidation. Sontzos having claimed to prove in respect of the debt of £1,612 6s. 8d., the liquidator rejected his proof on the ground that his signature of the balance sheet estopped him from saying that the sum due to him exceeded £1,787 13s. 4d. Sontzos now applied to the court to reverse this decision.

BENNETT, J., in giving judgment, said that there was nothing fraudulent in the arrangement made by the applicant at the board meeting. The company had not paid the debt to him nor got rid of it by accord and satisfaction, and it was still due. It had been argued that by signing the balance sheet he had represented that the only debt due to him was £1,787 13s. 4d., and was estopped from denying it. It was not proved that anyone had acted on the footing of the representation to his detriment, but it had been argued that the onus was on him to prove that no one did so act. But the balance sheet of a private company was not a public document and there was no obligation to show it to creditors. Here there was no proof that it was shown to any creditor. There were no grounds for the application of the doctrine of estoppel. It had not been shown that any creditor had refrained from taking proceedings against the company to recover a debt or had given it credit after seeing the balance sheet. The onus of establishing a case of estoppel was on the liquidator. The rejection of the proof was wrong.

COUNSEL: *W. G. Cook*; *A. E. Clark*.

SOLICITORS: *Carter & Bell*; *Herbert Oppenheimer, Nathan, Vandyk & Mackay*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Midland Bank Executor and Trustee Co. Ltd. *v.* Yarner's Coffee Ltd.

Farwell, J. 10th February, 1937.

WILL—CONSTRUCTION—"I FORGIVE AND RELEASE ALL SUMS OWING TO ME"—DEBT OWING BY COMPANY IN WHICH TESTATOR A SHAREHOLDER—WHETHER INDEBTEDNESS TERMINATED.

A testator of Danish birth, carrying on a large business as a market gardener, made his will in 1933, and died in 1934. He was a shareholder to the extent of £500 in the defendant company promoted by a gentleman also of Danish birth. In the course of the promoting of the company, he had approached the testator and they had become friendly. In 1931, a circular was sent to the shareholders indicating the need for additional working capital and inviting subscriptions to a loan of £1,500 at 7 per cent. per annum, to be repaid at the end of three years, the subscribers having an option at any time within that period to convert into preferred ordinary shares at par and at the same time subscribe for four deferred shares of 1s. for every preferred ordinary share taken up. The object was expressed to be to lead to the definite establishment of a sound business. In August, 1931, the testator wrote a letter saying that he had decided to subscribe £300 and hoped that the business would now be on sound lines. Thereafter, the company paid him interest on the sum so lent which at his death was still owing. By cl. 2 of his will, he said: "I forgive and release to any person indebted to me all sums owing to me by them, except such sums as shall be secured to me by mortgages or legal charges." He also gave certain legacies including £2,000 to the Nursery and Market Garden Industries Development Society, Ltd. He finally disposed of his residuary estate bequeathing it to the Midland Bank Executor and Trustee Co. Ltd. on certain trusts for the children of his brothers, authorising it to carry on his business as it thought fit. The estate was sworn at over £150,000. £64,000 was on deposit at the Midland Bank. There were certain sums of mortgage and interest exceeding £5,000, and there were book debts due to the testator in respect of his business, including one of over £6,600 for tomatoes. There was evidence of a debt of £200 advanced as a friend to help a lady to start a nursing home. No interest had been paid on it and there was no mortgage or legal charge. The question arose whether the debt from the defendant company had been released by cl. 2 of the will.

FARWELL, J., in giving judgment, said that if the clause were construed quite literally the bank would be released from its liability to pay the money on deposit, which was a debt, and the book debts would be released, but, in construing a will, the court was not obliged to discard common sense in considering the meaning to be attached to the words used.

Common sense made it impossible to construe the words as meaning that the testator meant to make a present to his bank of the sums on deposit or that he meant to release the debt for tomatoes. He had given express directions with regard to the carrying on of his business, and it was absurd to suppose that he meant it to be hampered by the release of the book debts. His lordship referred to *In re Neville* [1925] Ch. 44, at pp. 54, 55, and said that the debt now in question was not a personal one and could not be treated as a loan made purely out of friendship, but there was difficulty in limiting the clause to debts of that nature. Further, there was the question whether the company was excluded because the clause referred to "any person indebted to me." *Primâ facie*, a "person" included a corporation and in this will there was not sufficient to exclude it from that meaning. His lordship considered that cl. 2 released the debt to the defendant company.

COUNSEL: *Harman*, K.C., and *W. M. Hunt*: *Gover*, K.C., and *A. Hall*.

SOLICITORS: *C. R. Sawyer & Withall*; *Sutton Ommanney & Oliver*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Brice's Estate; Brice *v.* Frere.

Simonds, J. 11th March, 1937.

GAMING AND WAGERING — ADMINISTRATION — LOANS TO DISCHARGE CARD DEBTS — CLAIM AGAINST EXECUTOR — GAMING ACT, 1892 (55 Vict., c. 9), s. 1.

The testatrix, who died in 1936, had been a member of a club formed mainly for the purpose of playing bridge and poker. The terms were that the members should pay their losses to the winners. The club, acting as a clearing house, paid the winners and recovered their losses from the losers. Counters equivalent to £15 were issued to each player so that the member who at the end of the session returned fewer counters than were issued to him had to pay their value to the club, from which the winner collected the value of the counters he had won. The testatrix lost consistently, but out of friendship was allowed by the proprietress of the club to defer payment. Thus the club paid her losses, but she did not pay the club. At her death these losses amounted to £298 17s. 11d. After payment of all debts, expenses and legacies the executor had £730 in hand. The proprietress of the club now claimed to rank as a creditor of the estate.

SIMONDS, J., in giving judgment, said that had she lived the lady might well have paid her debt of honour, but the club ran the risk that she might die and her representatives might not be in a position to pay. The true analysis of the case was that the gambling debts were paid on the promise of the testatrix to repay them. His lordship referred to the Gaming Act, 1892, s. 1, and said that here there was a wagering contract rendered void by statute and a promise to repay sums advanced to pay the debts incurred under it. Those sums could not be recovered (*Tatam* v. *Reeve* [1893] 1 Q.B., at p. 46). It had been argued that the claim could be supported on the ground that a new consideration was given for a different and lawful contract in that, in consideration of her promises to pay, the testatrix had been allowed to use the club and continue to play (*Hyams* v. *Stuart King* [1908] 2 K.B., at p. 725). But there had been no contractual arrangement entered into between the parties as a result of those promises and the claim failed.

COUNSEL: *E. Stamp*; *Jopling*; *R. Edwards*.

SOLICITORS: *Rawlinson & Son*; *W. R. J. Hickman & Randall*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Mr. William Alexander Francis Colyer, solicitor, of Cricklewood, and of Clement's Inn, left £26,083, with net personalty £24,839.

High Court—King's Bench Division.

Chasteney *v.* Michael Nairn & Co. Ltd.

Lord Hewart, C.J., Swift and Goddard, JJ.
14th January, 1937.

FACTORY—MACHINERY—FAILURE TO FENCE SECURELY—COG-WHEELS—DANGEROUS IF LUBRICATED WHILE IN MOTION—LUBRICATION IN SUCH CIRCUMSTANCES UNLIKELY AND FORBIDDEN BY EMPLOYERS—WHETHER COG-WHEELS A "DANGEROUS PART OF THE MACHINERY"—FACTORY AND WORKSHOP ACT, 1901 (1 Edw. 7, c. 22) s. 10.

Appeal, by case stated, from a decision of the Greenwich stipendiary magistrate.

An information was preferred against the respondent company for failing to observe the provisions of s. 10 (1) (*c*) of the Factory & Workshop Act, 1901, in that certain parts of machinery were not securely fenced, or in such a position or of such construction as to be equally safe to those employed in the factory as they would be if securely fenced. The machine in question consisted *inter alia* of a drum driven by four pinions which were lubricated by screwing down grease caps of which one projected at the side and to the rear of each pinion. The only fence near the pinions was a double rail three feet two inches high. The drum could be tilted for cleaning, and when it was so tilted, the pinions were readily accessible to a person standing outside the fence. If the pinions, while the drum was tilted, were also in motion, they were dangerous to anyone trying to grease them. The respondents instructed their employees that the machine must be stopped for greasing, and that was generally done. In February, 1936, an employee of the respondents was engaged in greasing the machine while the drum was tilted. He was standing outside the railing and, while he was engaged in the greasing, his hand became caught in a pinion, and he sustained severe injuries. The case stated that there was no railing to prevent the employee's hand from being caught, and that the pinions, when in motion and tilted, were dangerous to any person putting his hands on them. The magistrate decided that there was no reason to suppose that a workman would grease the pinions while they were in motion, and that the machine could in no other circumstances be considered dangerous, and, therefore, that the pinions were not dangerous parts of the machinery.

LORD HEWART, C.J., said that he found it difficult to reconcile the magistrate's holding with his findings of fact. His finding really amounted to saying that the material part of the machine was dangerous unless a man refrained from putting his hand in to grease it while it was in motion. That, however, was an event which might well occur. It was precisely one of those cases where a man, in order to save himself trouble or time, or to avoid having to wait for a moment of safety, inserted his hand, not to do anything capricious, but to do what he was employed to do, namely, lubricate. He was doing what he was employed to do, but not at the appropriate moment. In his (his lordship's) opinion, that was exactly the kind of thing which s. 10 was designed to meet. It seemed impossible to contend on these facts that the pinions were securely fenced. As had been said in *Sowter* v. *Steel Barrel Co., Ltd.* (1935), 33 L.G.R. 376, at p. 381, "safe" meant "actually safe" and the actual safety was to be procured by secure fencing, safe position, or safe construction. The argument really was that there was danger if the greasing were done when the drum was in motion and tilted, but that it was unlikely that it would be greased at such a time. If that contention were to prevail, it would involve re-writing s. 10, because it would mean that it was enough that the machine was safe if everything were done that ought to be done. Experience had shewn that that state of industrial perfection did not exist, and that it was, therefore, necessary to insist on actually

secure fencing. These pinions seemed to him (his lordship) to be typically dangerous parts of machinery, which ought to have been securely fenced notwithstanding that a reasonable employer thought that such an act as was done was not likely to be done habitually or often. The appeal succeeded, and the magistrate must be directed to find the offence charged proved.

SWIFT and GODDARD, JJ., agreed.

COUNSEL: *Valentine Holmes*, for the appellant; *C. J. Conway*, K.C., and *D. E. Evans*, for the respondents.

SOLICITORS: *The Treasury Solicitor; L. Bingham & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Turner *v.* Courtaulds Ltd.

Lord Hewart, C.J., Swift and Goddard, JJ.
20th January, 1937.

FACTORY—FAILURE TO MAKE SWITCHBOARD DEAD—POWER-HOUSE IN FACTORY—NEW SECTION OF SWITCHBOARD BEING ADDED BY ELECTRICAL COMPANY AND NOT YET HANDED OVER TO FACTORY OWNER—FACTORY OWNER'S EMPLOYEE KILLED THROUGH TOUCHING LIVE PART IN ADDITIONAL SECTION—WHETHER ADDITIONAL SECTION OCCUPIED BY ELECTRICAL COMPANY OR FACTORY OWNER—FACTORY AND WORKSHOP ACT, 1901 (1 Edw. 7, c. 22), ss. 79, 142.

Appeal, by case stated, from a decision of Coventry justices

The respondent company was charged with failing to make dead a certain switchboard on its premises contrary to s. 79 of the Factory and Workshop Act, 1901, and regulations made under that section. The company owned a factory, part of which consisted of a power-house where electric energy of high power was generated for working the machinery. In the power-house was a switchboard which controlled the distribution of current throughout the factory. By making the switchboard dead all the machinery in the factory was brought to a standstill. In or about August, 1935, the electrical company which had supplied the respondents with their electrical equipment were engaged under a written contract with the respondents in erecting new equipment in the power-house, including an additional section to the switchboard. At the material date in April, 1936, the additional section had never been used, because, although completed, it had not been approved by the respondents because they had found it not to be in working order. On the 10th April, after the respondents had instructed the electrical company's engineer that the additional section was to be ready for use at 8 p.m., employees of the respondents were working on the additional section at 9 p.m. in order to put its switchgear into operation, when one of them came into contact with a live part, and received a shock from which he died. No accident would have occurred if the switchboard had previously been made dead. It was contended for the appellant that the respondents had committed an offence by failing to make the switchboard dead before their employees worked on it. It was contended for the respondents that they were not the occupiers of the additional section at the time of the accident, as the electrical company had not finished working on it or handed it over to the respondents in working order. The justices accepted that contention and dismissed the information.

LORD HEWART, C.J., said that it was important to observe the finding in the case that the respondent company were at all material times the owners of premises which were a factory within the meaning of the Act. The addition in question was being made in a vital and controlling part of the factory as a whole. The justices had allowed themselves to be persuaded that the respondents were not the occupiers of the additional section because the electrical company had not finished working at it or handed it over in working order. It was, however, to be observed that the compartment in itself consisted of wood and metal, and perhaps earthenware fittings, but that the whole object of it was to control the distribution of extremely powerful electrical energy which came from the respondents' power-house. On that, the respondents were unfortunate in this particular accident, but could not get rid of their responsibility. Counsel for the respondents had been driven to rely on s. 142 of the Act, which provided that "where in a factory . . . the owner . . . of a machine or implement moved by . . . mechanical power is some person other than the occupier of the factory, the owner . . . shall, so far as respects any offence against this Act . . . in connection with that machine . . . be deemed to be the occupier of the factory." It could not be contended, as was necessary if assistance were to be derived from that section, that this section of the switchboard was a machine moved by mechanical power. The switchboard obviously had not the function of moving at all. Its business was to be stationary. The conceivable hardship which might arise was obvious, but hard cases made bad law because they tempted people to accept bad arguments. The appeal must be allowed.

SWIFT and GODDARD, JJ., agreed.

COUNSEL: *Valentine Holmes*, for the appellant: *F. van den Berg*, K.C., and *Harold Eaden*, for the respondents.

SOLICITORS: *The Treasury Solicitor; Andrew, Purves, Sutton & Creery.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Kahn *v.* Aircraft Industries Corporation Ltd.

Singleton, J.
21st, 22nd, 25th, 26th, 27th, 28th, 29th January; 5th February, 1937.

PRINCIPAL AND AGENT—AGENT EMPLOYED TO NEGOTIATE—AGREEMENT REACHED—REFUSAL BY PRINCIPAL TO COMPLETE—COMMISSION—DAMAGES—AGENT'S RIGHTS.

Action by an agent to recover commission.

In July, 1936, negotiations were begun, by which, through the agency of the plaintiff, the defendant company were to acquire all the preference and ordinary shares in a company called Alley & MacLellan Ltd., of which the chairman was one, Reincke. Those shares were held by a company of which Reincke was also chairman. The court held on the facts that there was a concluded agreement between the defendant company and the vendors of the shares. The agreement, although complete in its terms, went off by reason that Reincke, who had been asked by the defendants to remain chairman of Alley & MacLellan Ltd., was asked, on the date when completion was expected to take place, to approve the inclusion of certain additional matters in the prospectus of the company, which approval he declined to give. The plaintiff now claimed damages in respect of his lost commission on the sale, contending that the defendant company had prevented him from earning it. *Cur. adv. vult.*

SINGLETON, J., having reviewed the negotiations carried out by the plaintiff, said that he was clearly employed by the defendants to negotiate an agreement on their behalf with the vendors of the shares, if possible. He (his lordship) thought that the defendants had acted arbitrarily in refusing to complete the agreement into which they had entered. The additional terms to which Reincke had refused to agree were no part of the agreement of the preceding negotiations. They should never have been proposed, and the defendants' managing director's refusal to complete was a wilful default. The plaintiff's claim was for commission, and alternatively for damages. Having regard to his agreement with the defendants that they would pay him £16,000 commission in the event of their purchasing the whole of the shares in question, he (his lordship) did not think the plaintiff entitled to that sum as commission. He must be bound by the strict terms of his bargain in a case of this nature, and he took the

risk that no agreement would be reached; but if agreement were reached, the questions arose whether his claim could be defeated if the party who employed him to negotiate refused to complete, or whether there was an implied term in the contract between them that the principal would not, by wilful default, do anything which would prevent the agent from earning his commission, and whether the defendants had broken that term. Such a term could clearly only be implied if it was necessary in order to give the contract business efficiency. In *George Trollope & Sons* v. *Martyn Bros.* [1934] 2 K.B. 436, a somewhat similar case, the Court of Appeal decided by a majority that, in the case of an ordinary estate agent, a term should be implied that, if the purchaser introduced by the agent were able and willing to complete the contract, the principal would not, by refusing to complete, prevent the agent from earning commission. If such an obligation must be implied against the vendors there, he (his lordship) thought that a similar obligation on the purchasers must be implied here. It appeared that Scrutton, L.J., only dissented in that case because there was a provision "subject to contract," and no complete agreement between vendors and purchasers as to the contract. In the present case there was a complete agreement. A dictum of Lord Dunedin in *L. French & Co. Ltd.* v. *Leeston Shipping Co. Ltd.* [1922] 1 A.C. 451, at p. 455, that wilful default could only arise if the act resulting in the non-earning of commission had been done simply in order to avoid paying commission, had caused him (his lordship) considerable trouble. He could not, however, think that those words were meant to cover a case such as this, or that they had escaped the notice of the court in *Trollope's Case*, *supra*. In his opinion, therefore, the plaintiff was entitled to damages, and the question remained how much. That had been considered in *George Trollope & Sons* v. *Caplan* [1936] 2 K.B. 382. Following that case, and because he was not entitled to cut down the amount of damages because it seemed to him to be a large sum, he would give judgment for the plaintiff for £16,000.

COUNSEL: *J. M. Tucker*, K.C., *Valentine Holmes* and *T. G. Roche*, for the plaintiff; *G. Beyfus*, K.C., and *P. A. Devlin*, for the defendants.

SOLICITORS: *Kenneth Brown, Baker, Baker; Clifford-Turner & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Burgess, otherwise Leadbetter *v.* Burgess.

Bucknill, J. 14th December, 1936.

NULLITY — EVIDENCE — WIFE'S PETITION — HUSBAND'S INCAPACITY—CHILDREN BORN TO WIFE DURING MARRIAGE —ADMISSIBILITY OF WIFE'S EVIDENCE AS TO PATERNITY —RULE IN *Russell* v. *Russell* [1924] A.C. 687, NOT APPLICABLE—*Farnham* v. *Farnham, otherwise Daniels* (1937), 81 SOL. J. 60, APPLIED.

This was a wife's petition for nullity on the ground of incapacity of the husband. It raised, in a slightly different form, the question of a spouse giving evidence in nullity cases tending to bastardise the ostensible issue of the marriage, which was recently the subject of a decision by Langton, J., in *Farnham* v. *Farnham, otherwise Daniels* (1937), 81 SOL. J. 60. The facts and arguments appear sufficiently from the judgment.

BUCKNILL, J., in the course of giving judgment, said: "This is a rather unusual case. It is a petition by a woman for a decree of nullity on the ground of the incapacity of her husband. The husband has not appeared to the petition. The parties were married in August, 1928, and according to the evidence of the petitioner, who gave her evidence very well, and I think truthfully, she was at that time pregnant by another man. The other man was unwilling or unable to marry her, and she said that she told her future husband of her condition, and who the father was, and that he was quite prepared to marry her and to treat the child as his child. The parties went through a form of marriage, but the evidence of the petitioner was that the marriage was never consummated owing to the incapacity of the husband. They lived together for some months, then he left his wife for about three years, then he asked her to come back. She went back and they lived together again for eight months. The same thing happened; he was unable to consummate the marriage owing to his impotent condition; she was willing but he was incapable. Then they parted again, and from April, 1935, they lived together until October, 1935. The same thing happened again; he was incapable; and, on this occasion, the petitioner got a doctor, who was called as a witness, to examine the husband. The doctor says he came to the conclusion that the husband was sterile and slightly malformed. In October, 1935, the petitioner left her husband. On 6th August, 1936, she gave birth to a child. The petitioner has given an explanation as to the birth of that child, which is that another man was the father. The question that I have to decide is whether that evidence is admissible. Mr. Latey, who has put the case very clearly before me, has argued that this evidence of the wife as to the parentage of the second child is admissible under the decision of Langton, J., in the case of *Farnham* v. *Farnham, otherwise Daniels*, *supra*. The facts in that case were rather different from this case, because in that case it was the husband who was petitioning for the annulment of his marriage, and the difficulty which he had to get over was that his wife had given birth to a child. It was argued there, or suggested there, that to give evidence of non-consummation between husband and wife would tend to bastardise that child. I cannot myself see any reason in principle why the arguments which Langton, J., followed in that case should not apply in this case. It may not seem such a hardship on the wife in this case to exclude the evidence as it would have been in *Farnham* v. *Farnham*, *supra*, because in this case it is she herself who has given birth to a child, although the circumstances in which it was conceived were not altogether to her discredit. In the circumstances I think I ought to admit the evidence. I accept it and I find that her husband was at all times incapable of consummating the marriage, and that the marriage never was, in fact, consummated, and there will be a decree of nullity pronounced in the suit.

COUNSEL: *John Latey*, for the petitioner.

SOLICITORS: *Wood, Nash & Co.*, for *Sheppard & Son*, Battle.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Reviews.

The Law of Income Tax. By Sir JOHN HOULDSWORTH SHAW, Solicitor of Inland Revenue, and T. MACDONALD BAKER, an Assistant Solicitor of Inland Revenue. 1937. Royal 8vo. pp. xci and (with Index) 633. London: Butterworth & Co. (Publishers) Ltd. 40s. net.

The law of Income Tax is clearly and concisely set out in this comprehensive work. Authority for all statements is given in great detail in the lower part of each page. Brief summaries of the effect of most decided cases find their places amongst the authorities. We were particularly interested in the last chapters which dealt with administration. The authors' official position makes them fully conversant with that branch of the law as well as with computation and liability. The authors emphasise that the book is in no sense an official publication. The tables of statutes and cases and the index are complete and clear.

Books Received.

Motor Trade Practice. By P. A. Reynolds, F.I.M.T. 1937. Crown 8vo. pp. ix and (with Index) 260. London: Methuen & Co., Ltd. 7s. 6d. net.

Soviet Justice and the Trial of Radek and others. By Dudley Collard, Barrister-at-Law. Introduction by D. N. Pritt, K.C., M.P. 1937. Crown 8vo. pp. 208. London: Victor Gollancz. Ltd. 3s. 6d. net.

The Juridical Review. Vol. XLIX, No. 1. March, 1937. Edinburgh: W. Green & Son, Ltd. 5s. net.

Dighton's Diplomatic Corps and Consular Directory. London, 1937. Crown 4vo. pp. 101. Edited and published by Arnold E. Dighton, 42, Queensborough Terrace, London, W.2.

The Tithe Act, 1936. By S. C. G. Wilkinson, B.A., of the Inner Temple, Barrister-at-Law. 1937. Demy 8vo. pp. xx and (with Index) 171. London: The Estates Gazette, Ltd. 10s. 6d. post free.

The Public Health Act, 1936. By The Hon. Dougall Meston, of Lincoln's Inn, Barrister-at-Law. 1937. Royal 8vo. pp. lxxxv and (with Index) 300. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 30s. net.

Parliamentary News.

Progress of Bills.

House of Lords.

Bath Corporation Bill.
Read Second Time. [16th March.
British Shipping (Continuance of Subsidy) Bill.
Reported without Amendment. [16th March.
Defence Loans Bill.
Reported without Amendment. [17th March.
Divorce (Scotland) Bill.
Read Third Time. [16th March.
Empire Settlement Bill.
Reported without Amendment. [11th March.
Local Government (Financial Provisions) Bill.
Reported without Amendment. [17th March.
Merchant Shipping Bill.
Reported without Amendment. [16th March.
Merchant Shipping (Spanish Frontiers Observation) Bill.
Read Third Time. [11th March.
Ministry of Health Provisional Order (Bedford) Bill.
Reported without Amendment. [17th March.
Ministry of Health Provisional Order (Colwyn Bay) Bill.
Reported without Amendment. [17th March.
Ministry of Health Provisional Order (Ealing Extension) Bill.
In Committee. [17th March.
Ministry of Health Provisional Order (Earsdon Joint Hospital District) Bill.
Read Second Time. [16th March.
Ministry of Health Provisional Order (East Hertfordshire Joint Hospital District) Bill.
Reported without Amendment. [16th March.
Ministry of Health Provisional Order (Somerset and Wilts) Bill.
In Committee. [17th March.
Ministry of Health Provisional Order (Waltham Joint Hospital District) Bill.
Reported without Amendment. [16th March.
Ministry of Health Provisional Order (Wisbech Joint Isolation Hospital District) Bill.
Reported without Amendment. [16th March.
Newcastle-under-Lyme Corporation Bill.
Read Second Time. [16th March.
Newcastle-upon-Tyne Corporation (Trolley Vehicles) Provisional Order Bill.
Reported without Amendment. [16th March.
Public Health (Drainage of Trade Premises) Bill.
Reported without Amendment. [16th March.
Saint Paul's and Saint James' Churches (Sheffield) Bill.
Read Second Time. [16th March.
Waltham Holy Cross Urban District Council Bill.
Read Third Time. [16th March.

House of Commons.

General Cemetery Bill.
Reported with Amendments. [11th March.
Great Western Railway Bill.
Reported with Amendments. [11th March.
Kingston-upon-Hull Provisional Order Bill.
Read Third Time. [12th March.
London and North Eastern Railway Bill.
Reported with Amendments. [17th March.
Margate, Broadstairs and District Electricity Bill.
Read Second Time. [15th March.
Merchant Shipping (Spanish Frontiers Observation) Bill.
Read Second Time. [17th March.
Physical Training and Recreation Bill.
Read First Time. [16th March.
Rickmansworth and Uxbridge Valley Water Bill.
Read Second Time. [15th March.
Road Traffic Bill [Title Amended].
Reported with Amendments. [16th March.
Rotherham Corporation Bill.
Reported with Amendments. [11th March.
Shops (Sunday Trading Restriction) Act (1936) Amendment Bill.
Reported with Amendments. [11th March.
Waltham Holy Cross Urban District Council Bill.
Read First Time. [16th March.

Questions to Ministers.

DIVORCE CAUSES (ASSIZES).

Mr. Goldie asked the Attorney-General whether his attention has been drawn to the practice of entering undefended divorce cases at assize towns rather than in London; and whether he will, in the public interest, cause the rules of the Divorce Division to be amended, so that no such undefended case, other than a poor persons case, shall be entered at an assize town unless the petitioner or respondent has a permanent place of residence within the county in respect of which such assizes are to be held?

The Attorney-General: To restrict the entry of Divorce Causes at Assizes as suggested by my hon. and learned Friend might cause hardship to parties and inconvenience to witnesses where the Petitioner, though not a poor person, is of small means. By the Administration of Justice Act, 1920, and Statutory Orders, any undefended matrimonial cause may be tried at any of the Assize Towns prescribed for the trial of such causes. By the Rules of the Supreme Court the place of hearing is to be determined by a Registrar of the Principal Probate Registry upon consideration of the Petition and of any information in relation to residence convenience and expense of the parties and witnesses which he may require. It is the invariable practice to require the facts as to the residence of the parties and witnesses to be set forth in an affidavit. [17th March.

POOR PRISONERS' DEFENCE ACT.

Mr. Liddall asked the Home Secretary the number of cases for 1936 in which two counsel have been allowed to accused persons under the Poor Prisoners' Defence Act upon application by them to the committing magistrates, the number of refusals in like circumstances, and, of the latter, the number of cases in which the second counsel has been allowed upon application to the trial judge; and will he state by whom the appointment is then made?

Sir J. Simon: The latest figures available are those for 1935. During that year 25 defence certificates authorising two counsel were granted by committing justices and five by courts of assize. I cannot say in how many cases an application for two counsel was refused. It is for the solicitor acting for the accused to instruct counsel, whether one or two are allowed. [17th March.

Societies.

The Hardwicke Society.

A meeting of the Society was held on Friday, 5th March, at 8.15 p.m., in the Middle Temple Common Room, the Hon. Treasurer, Mr. G. E. Llewellyn Thomas, in the chair. Mr. A. A. Baden Fuller moved: "That the legal profession gives the public what it requires." Mr. A. Newman Hall opposed. There also spoke Mr. Campbell Prosser, Mr. Douglas, Mr. Picarda, Mr. Lewis Sturge (Hon. Secretary), Mr. Krikorian and Mr. Harper. The hon. mover having replied, the House divided, and the motion was lost by six votes.

The Solicitors' Managing Clerks' Association.

"Some Aspects of the Law as to Gaming."

Lord Wright, Master of the Rolls, took the chair at a lecture on "Some Aspects of the Law as to Gaming," given in the Inner Temple Hall, on Friday, 5th March, by Mr. Gilbert Beyfus, K.C.

Mr. Beyfus said that there were no principles of the law of gaming. It was a common law misdemeanour to keep a gaming house, but that was the only connection gaming had with the common law. The law of gaming was a creature of statute and of court decision, and there was no common principle running through the statutes except that of interference and prohibition. The first Act directed against gaming was passed in the time of Henry VIII, but it was directed as much against the playing of certain games as against wagering on their results, and was intended to prohibit those sports which distracted men from archery. That Act was modified by the first section of the Gaming Act, 1845, as far as games of skill were concerned, though it was still law for games of chance.

After a brief historical outline of the earlier statutes, Mr. Beyfus referred to the most important gaming statute, commonly known as the 9 Anne, c. 19 Gaming Act. This Act provided that any form of securities for money won at play or advanced at the time of gaming should be void. The Gaming Act, 1835, modified this statute, and now, instead of being declared void, such securities "shall be deemed to have been given for an illegal consideration." Section 2 declared that where money was paid to the holder of any such security, the person paying could recover from the person to whom it had originally been given. With the tremendous development of cheques, any person who had lost money to a bookmaker or at a game of poker and had paid by cheque could, under that section, recover it, as was established in 1920 and 1922. This section had been repealed by the Gaming Act, 1922. With these modifications, the Act of Anne was in operation to-day. There were four different cases in which it affected gaming. When money was lent abroad to a man to play at a game which was legal, and the man gave an English cheque, no action would lie on the cheque. Secondly, when the same circumstances arose, but no cheque was given, the money lent would be recoverable in England if recoverable by the law of the country where it was lent. In the third case, when a cheque was given, it had been decided that the lender could disregard the cheque and sue for the money lent if recoverable by the law of the country where it was lent: *Société Anonyme des Grandes Etablissements du Touquet Paris-Plage* v. *Baumgart* (1927), 43 T.L.R. 278. The fourth case was that in which money was lent in England by one man to another against a cheque in order to play a legal game, such as bridge. If the lender sued on the cheque or for the loan he could not recover: *Carlton Hall Club* v. *Lawrence* [1912] 2 K.B. 153 (73 Sol. J. 127). Mr. Beyfus questioned the decision in this case, especially since Lord Roche had, as Roche, J., delivered on the same facts a judgment in the opposite sense. It was an extremely difficult point of law and one on which the authorities were very unsatisfactory.

In any case in which a French court came to the conclusion that money had been lent for the purpose of gaming, the loan was irrecoverable in France. It was the invariable habit of casinos to quote *Baumgart's Case*, *supra*, to establish their right to recover from Englishmen. This case was right according to English law but wrong in its exposition of French law. In every case in which Mr. Beyfus had acted against a French casino suing an Englishman for a gaming debt, he had been able to show that such loans were not recoverable in France and the casino had dropped the case to prevent any decision against *Baumgart's Case* being reported.

The Gaming Act, 1845, was of importance because then for the first time contracts by way of gaming and wagering were made void and no action could be brought to recover any sum alleged to have been won on a wager. With one exception, that statute was law to-day. In the case of *Hyams* v. *Stuart King* [1908] 2 K.B. 696 (52 Sol. J. 551), the Court of Appeal decided by a majority that an agreement to pay in consideration of the winner not declaring the loser a defaulter was valid and enforceable. Thus, if A lost £100 to B through betting at horse-racing, that debt was not enforceable. If B said to A "I will report you to Tattersall's unless you promise to pay within one month, but if you do that I will not report you," and A agreed, then at the end of the month B could sue A if he had not paid. It was said that a new agreement for a new consideration to pay what happened to be the same sum (£100) had been made, and that the action was based on an agreement to pay £100 to avoid being reported, not an agreement to pay £100 on a bet. Many lawyers had often doubted the validity of *Hyams' Case*. Fletcher Moulton, L.J., who dissented, came to the conclusion that the person suing was claiming a gaming debt whether the root consideration was the same or not, and that the second agreement was tantamount to blackmail. As a result of that decision what was almost a new industry had been born.

The Gaming Act, 1845, had a criminal as well as a civil aspect. It provided penalties for keeping a common gaming house, which were strengthened by the Gaming House Act, 1854. The Betting Act, 1853, was probably the most important statute at the moment on the criminal aspects of gaming. Until the Betting and Lotteries Act, 1934, these three Acts had been the principal ones prohibiting and regulating gaming in this country. The 1853 Act was designed primarily to regulate and prohibit betting offices. The fact that such offices flourished all over the country was not due to some subtle evasion of the law, but to the development of the telephone and telegraph since the passing of the Act, for it was decided that bets made by telegraph, telephone, or even post did not constitute *resorting* to a betting office. Betting on a credit basis was also not prohibited in that Act. Bookmaking on tracks was not affected by the 1853 Act, being regulated by the Betting and Lotteries Act, 1934, s. 12.

Mr. Beyfus dealt with the effect of the three Acts on competitions, automatic machines, whist drives, and pool betting, and pointed out that in all competitions there must be a substantial amount of skill exercised, and that in the case of crosswords with prizes one alternative solution must be preferable to the others, otherwise chance was involved: *Coles* v. *Odhams Press* (1936), 52 T.L.R. 119 (79 Sol. J. 860). He gave examples of how newspapers introduced the necessary amount of skill into their competitions, giving prizes for clever catch phrases, the choice of the twelve best film stars, and so forth. He concluded by suggesting means of getting up test cases on the law of gaming.

A vote of thanks to Lord Wright and Mr. Beyfus was proposed by Mr. Bosman and seconded by Mr. Hammond.

Lord Wright, in reply, said that the law of gaming was a difficult subject. There was a good deal of money in it, and where there was money people of ingenuity would exercise their powers in devising means of evading such laws as there were, which led to further distinctions and legislation *ad infinitum*.

The Selden Society.

This Society held its annual general meeting in the Council Room, Lincoln's Inn Hall, on the 11th March.

Lord Wright, Master of the Rolls, the Society's President, took the chair, and in reviewing the work of the Society for the past year reminded members that the Society had reached its jubilee year, having been founded in 1887. During that period its members had received fifty-five volumes of the Society's publications and three additional volumes. He recorded with great regret the death of Sir Frederick Pollock, one of the original members, and of Viscount Hanworth, another devoted and assiduous member. The accounts showed a substantial balance on the right side, for the total cost of administration was very low. The last year's volume was Select Cases in the Court of King's Bench under Edward I, Volume I, by Dr. G. O. Sayles. This had been well received, and the *Law Quarterly Review* had described it as an invaluable and scholarly contribution, every page of which showed learned and painstaking research into a multitudinous mass of records. The volume for the present year would deal with Rolls of the Justices in Eyre, Yorkshire, 3 Henry III, 1218–19, by Mrs. Doris M. Stenton. The three rolls printed in this volume were the most complete record in existence of the judicial business in a single shire during this crucial year of the reign. They were of special interest in that Bracton had quoted from them in his treatise. Several other volumes were in preparation. He regretted that the membership was so small: about 150 American members and 300 members in England, of which half were institutions. In a country with an unequalled collection of ancient records from the earliest times, and with so many universities in which studies of law were developing so magnificently, it was strange that the membership should not be larger. The example of Sir Frederick Pollock and Professor Maitland was worthy of being followed, and he hoped that this most worthy Society would have an increase in its membership.

Lord Atkin, who moved a vote of thanks to the officers of the Society for their services in the past year, said that interest in the Society might perhaps be widened by bringing its efforts up to a later date than the times of the Year Books, and not only providing material for research workers but also encouraging research in the use of those materials. Some student of the Year Books might, for instance, produce

a specialised history of particular topics dealing with contract, tort and the criminal law, all of which were of great interest to the general body of lawyers. A report of some of the earliest criminal cases would be of real value.

Bournemouth and District Incorporated Law Society and Dorset Law Society.

The Bournemouth and District Incorporated Law Society and the Dorset Law Society held a dinner at the Royal Bath Hotel, Bournemouth, recently, when presentations were made to His Honour Judge Hyslop Maxwell to mark his forthcoming retirement as judge of county courts on Circuit 55. Mr. Walter A. Maslen, president of the Bournemouth Law Society, was in the chair, and the company numbered about 120.

After the President had given the loyal toast, Mr. C. Dickinson, of Poole, proposed "The Bench and Bar," which was acknowledged by Mr. Trapnell for the Bench, and Mr. Geoffrey Howard for the Bar.

The toast of "The Bournemouth Law Society and the Dorset Law Society" was proposed by Mr. L. F. Paris, of Southampton, secretary of the Hampshire Law Society, and responded to by Mr. Walter A. Maslen, the president of the Bournemouth Law Society, and Mr. Lock, president of the Dorset Law Society.

The toast of "The Visitors" was given by Mr. G. G. H. Symes, of Weymouth, and acknowledged by Sir Sydney Robinson.

The presentations were made to Judge Maxwell during the evening, and in a speech acknowledging the gifts he spoke of the happy relationships that had existed between himself and both branches of the profession during the seventeen years he had been judge on that circuit.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held on 3rd March at 60, Carey Street, W.C.2, with Mr. R. C. Nesbitt in the chair. The following Directors were present: Mr. F. L. Steward (Wolverhampton), Vice-Chairman, Mr. F. E. F. Barham, Mr. G. S. Blaker (Henley), Mr. P. D. Botterell, C.B.E., Dr. E. Bramley (Sheffield), Mr. A. J. Cash (Derby), Sir E. Cook, C.B.E., Mr. Sefton Clarke (Bristol), Mr. T. S. Curtis, Mr. E. F. Dent, Mr. R. Epton (Lincoln), Mr. A. N. Hickley, Sir Norman Hill, Bart., Mr. G. Keith, Sir E. F. Knapp-Fisher, Mr. C. G. May, Mr. H. F. Plant, Mr. E. Sant (Salisbury), Mr. H. White (Winchester) and the Secretary. £990 was distributed in grants to necessitous cases, and twenty-seven new members elected, and other business transacted.

The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room on Wednesday, the 10th March, at 8.15 p.m., the President (Mr. S. R. Lewis) being in the chair. Captain Ellershaw proposed the motion: "That national policy should be directed to co-operation with the United States rather than with any European power." Mr. Hubert Moses (Hon. Secretary) opposed, and Mr. Orme, Mr. Ingram, Mr. Buckland, Mr. Russell-Clarke, Mr. Irwin and Mr. Hurle-Hobbs also spoke. Captain Ellershaw replied.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 2nd March (Chairman, Mr. Q. B. Hurst), the subject for debate was: "That the case of *F. W. Woolworth & Company Ltd.* v. *Lambert* [1936] 1 Ch. 415, was wrongly decided." Mr. C. F. S. Spurrell, opened in the affirmative; Mr. H. F. MacMaster opened in the negative; Mr. K. J. T. Elphinstone seconded in the affirmative; and Mr. L. E. Long seconded in the negative. The following members also spoke: Messrs. J. Campbell-Carter, R. Landman, C. F. J. Baron, J. E. Terry, W. M. Pleadwell, J. K. Thorpe, W. S. Chaney, G. A. Russo, and A. L. Slater. The opener having replied, the motion was carried by one vote. There were twenty-two members and one visitor present.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 9th March (Chairman, Mr. G. Roberts), the subject for debate was: "That this House approves the provisions of the Marriage Bill, 1937 (as amended by Standing Committee A)." Mr. G. B. Hurst opened in the negative. The following members also spoke: Messrs. R. Langley-Mitchell, D. J. Smalley, E. Long, R. D. C. Graham, C. F. Baron, J. K. Campbell-Carter, D. I. Miller, W. S. Chaney and J. S. Blair. The opener having replied, the motion was lost by three votes. There were nineteen members and one visitor present.

University of London Law Society.

The University of London Law Society held its annual mock trial at London University, Gower Street, on 9th March. The Botanical Theatre proved a good venue for the occasion, the platform making an excellent vantage ground for the bench, witness-box and dock.

Muslayha Bargle (Mr. Yahuda) was indicted before Sir Charles Odgers for abduction and murder. Mr. C. Levy and Mr. Chand appeared for the prosecution and Mr. R. E. Gill and Mr. D. Sacher for the defence.

The witnesses included Mr. N. D. Gill (a village constable), Mr. Mutsusani (the disciple of the accused) and Mr. Kay.

The jury returned a verdict of guilty and sentence was passed according to law, but the prisoner had already disappeared.

The President (Mr. F. E. C. Wood) proposed a vote of thanks to Sir Charles for coming up from the country to preside so successfully.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 8th March. Mr. R. W. Bell proposed the motion: "That mass delusion by advertisement is sapping the character of the people." Mr. S. A. Redfern opposed. Messrs. McQuown, Burke, Gibbons, Pratt, Hill, C. H. Pritchard, Miss B. Bicknell and Mr. Vine Hall also spoke, and Mr. Bell replied. The motion was put to the house and carried by nine votes to eight, the chairman giving his casting vote in favour of the motion. Attendance seventeen.

A meeting of the United Law Society was held in the Middle Temple Common Room, on Monday, 15th March, at 8 p.m. Mr. H. W. Sharp proposed the motion: "That Co-operative stores are a menace to the Nation." Mr. C. H. Pritchard opposed. Messrs. McQuown, Pratt, Vine Hall, Raffetty, Owens, Butcher and Hill also spoke, and Mr. Sharp replied. The motion was put to the House and lost by four votes to seven. Attendance: seventeen, including four visitors.

The Solicitors' Law Stationery Society, Limited.

The report of The Solicitors' Law Stationery Society, Limited, states that sales for the year 1936 were considerably in excess of those in 1935, and the profit for the year amounted to £70,143, against £60,174 in 1935. The available balance amounts to £81,636, and the directors recommend that a dividend of 15 per cent., less income tax, be paid for the year, on account of which an interim dividend of 4 per cent. was paid on 20th October last.

As the dividend exceeds 3 per cent., a bonus is distributable under the articles of association amongst solicitors whose accounts with the Society during the year exceeded £50. A bonus is also payable to the staff under the profit-sharing scheme.

The dividend and bonuses absorb the sum of £62,255, and out of the balance the directors propose to add £5,000 to the Reserve Account and £2,000 to the Women's Pension Reserve (double), leaving £12,380 to be carried forward.

The annual meeting will be held at 102-7, Fetter Lane, E.C.4, on Tuesday, 23rd March, at 12.30 p.m.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve, on the recommendation of the Lord Chancellor, the names of the following gentlemen for appointment to the rank of King's Counsel: Lewis Pugh Evans Pugh, Wilfrid Alexander Barton, Herman Victor Rabagliati, Ernest Evans, M.P., John Francis Eastwood, O.B.E., M.P., Geoffrey Dorling Roberts, Robert Eric Burrell, Richard Francis Levy, Cyril Lander King, Charles Robert Ritchie Romer, Kew Edwin Shelley, Philip Vos, Fred Eills Pritchard, Lionel Frederick Heald, Owen Temple Morris, M.P., Hubert Stanley Houldsworth.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. Grafton Deen Pryor be appointed Recorder of Ipswich, to succeed Mr. Heber Hart, K.C., who has resigned. Mr. Pryor was called to the Bar by the Inner Temple in 1909.

The King has been pleased on the recommendation of the Secretary of State for Scotland to appoint Mr. K. D. CULLEN, advocate, to be Sheriff Substitute of Roxburgh, Berwick, and Selkirk, at Selkirk, in place of the late Mr. W. Mitchell, K.C. Mr. Cullen was called to the Scottish Bar in 1919.

Mr. J. H. SOADY, solicitor, of Tonbridge, has been appointed Coroner for the Tonbridge District of Kent, in succession to Mr. A. H. Neve. Mr. Soady was admitted a solicitor in 1911.

Mr. K. B. EDWARDS, Town Clerk of Crewe, has been appointed Superintendent Registrar of the new Crewe Registration District. Mr. Edwards was called to the Bar by Gray's Inn in 1931.

Mr. W. MAURICE MELL, LL.M., solicitor, Town Clerk of West Hartlepool, has been appointed Recorder of Hartlepool, in succession to the late Mr. H. W. Bell. Mr. Mell was admitted a solicitor in 1930.

Mr. FRANCIS DESMOND LITTLEWOOD, solicitor, Deputy Town Clerk of Exeter, has been appointed Deputy Town Clerk of East Ham. Mr. Littlewood was admitted a solicitor in 1928.

Mr. E. D. SPENCER, Deputy Town Clerk of Huddersfield, has been appointed Clerk of the Peace for Huddersfield in succession to Mr. J. H. Field. Mr. Spencer was admitted a solicitor in 1923.

Notes.

A congratulatory dinner was given by the Northern Circuit in the Inner Temple Hall last Saturday, to Sir Leslie Scott, upon his appointment as Lord Justice of Appeal. Mr. Edward Hemmerde, K.C., Recorder of Liverpool, presided.

Herefordshire County Council made presentations to their clerk, Dr. E. W. Maples, who has retired after eighteen years' service, first as director of education and afterwards as clerk of the peace and clerk of the council, at a gathering at the Shirehall, Hereford, last Saturday.

Sir Thomas Forster, K.C., who retired last year from the chairmanship of the Middlesex Sessions, was presented with a portrait in oils of himself at Middlesex Guildhall recently. The gift was handed over by the Lord Lieutenant (Lord Rochdale) on behalf of Sir Thomas Forster's fellow justices.

Rules and Orders.

THE PROVISIONAL TITHE RULES, 1937, DATED MARCH 10, 1937. [Price 6d. net.]

Court Papers.

Supreme Court of Judicature.

Date.	Emergency Rota.	Appeal Court No. I.	Group I. Mr. Justice Eve. Witness Part I.	Group I. Mr. Justice Bennett. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
Mar. 22	Andrews	Blaker	*Hicks Beach	*Andrews
,, 23	Jones	More	*Andrews	*Jones
,, 24	Ritchie	Hicks Beach	*Jones	*Ritchie
,, 25	Blaker	Andrews	Ritchie	Blaker
	Group I. Mr. Justice Crossman. Non-Witness	Mr. Justice Clauson. Non-Witness	Group II. Mr. Justice Luxmoore. Witness Part II.	Mr. Justice Farwell. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
Mar. 22	Jones	More	Blaker	*Ritchie
,, 23	Ritchie	Hicks Beach	More	*Blaker
,, 24	Blaker	Andrews	Hicks Beach	*More
,, 25	More	Jones	Andrews	Hicks Beach

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

The Easter Vacation will commence on Friday, the 26th day of March, 1937, and terminate on Tuesday, the 30th day of March, 1937.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th April, 1937.

	Div. Months.	Middle Price 17 Mar. 1937.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	108½	3 13 9	3 8 2
Consols 2½%	JAJO	76	3 5 9	—
War Loan 3½% 1952 or after	JD	101¾	3 8 10	3 7 1
Funding 4% Loan 1960-90	MN	111½	3 11 9	3 5 7
Funding 3% Loan 1959-69	AO	95¼	3 3 0	3 4 10
Funding 2¾% Loan 1952-57	JD	93½	2 18 10	3 3 11
Funding 2½% Loan 1956-61	AO	87½	2 17 2	3 5 2
Victory 4% Loan Av. life 23 years	MS	108¾	3 13 7	3 8 10
Conversion 5% Loan 1944-64	MN	115	4 6 11	2 9 2
Conversion 4½% Loan 1940-44	JJ	107½	4 4 0	2 18 11
Conversion 3½% Loan 1961 or after	AO	100½	3 9 8	3 9 5
Conversion 3% Loan 1948-53	MS	100	3 0 0	3 0 0
Conversion 2½% Loan 1944-49	AO	96½	2 11 10	2 17 0
Local Loans 3% Stock 1912 or after	JAJO	88	3 8 2	—
Bank Stock	AO	345½	3 9 5	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78	3 10 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87½	3 8 7	—
India 4½% 1950-55	MN	111	4 1 1	3 8 8
India 3½% 1931 or after	JAJO	88	3 19 7	—
India 3% 1948 or after	JAJO	75	4 0 0	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	111	3 12 1	3 0 5
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 3 10
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 8 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	89½	2 15 10	3 5 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 10 11
Australia (C'mm'nw'th) 3% 1955-58	AO	91xd	3 5 11	3 12 0
Canada 4% 1953-58	MS	107	3 14 9	3 8 6
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945	AO	96	3 2 6	3 11 9
Nigeria 4% 1963	AO	110xd	3 12 9	3 8 7
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	102	3 8 8	3 6 8
*Victoria 3½% 1929-49	AO	99	3 10 8	3 12 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	90	3 6 8	—
Croydon 3% 1940-60	AO	96½	3 2 2	3 4 4
Essex County 3½% 1952-72	JD	103½	3 7 8	3 4 4
Leeds 3% 1927 or after	JJ	86½	3 9 4	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	75½	3 6 3	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85	3 10 7	—
Manchester 3% 1941 or after	FA	87	3 9 0	—
Metropolitan Consd. 2½% 1920-49	MJSD	96	2 12 1	2 18 0
Metropolitan Water Board 3% "A" 1963-2003	AO	85½	3 10 2	3 11 6
Do. do. 3% "B" 1934-2003	MS	88	3 8 2	3 9 3
Do. do. 3% "E" 1953-73	JJ	95	3 3 2	3 4 9
Middlesex County Council 4% 1952-72	MN	109	3 13 5	3 5 5
* Do. do. 4½% 1950-70	MN	110½	4 1 5	3 10 8
Nottingham 3% Irredeemable	MN	86½	3 9 4	—
Sheffield Corp. 3½% 1968	JJ	103½	3 7 8	3 6 4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	103	3 17 8	—
Gt. Western Rly. 4½% Debenture	JJ	113½	3 19 4	—
Gt. Western Rly. 5% Debenture	JJ	124½	4 0 4	—
Gt. Western Rly. 5% Rent Charge	FA	120½	4 3 0	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	118½	4 4 5	—
Gt. Western Rly. 5% Preference	MA	109½	4 11 4	—
Southern Rly. 4% Debenture	JJ	102½	3 18 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	107	3 14 9	3 11 6
Southern Rly. 5% Guaranteed	MA	118½	4 4 5	—
Southern Rly. 5% Preference	MA	107½	4 13 0	—

*Not available to Trustees over par.

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Stock

Approximate Yield with Redemption	
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7	1
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3	11
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8	10
9	2
18	11
9	5
0	0
17	0
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10	0
11	9
8	7
10	0
6	8
12	0
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